Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

DAVID WAYFIELD,

PETITIONER

vs.

TOWN OF TISBURY,
MARJORIE CONVERY

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Appellate Court, First Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit in which he claimed that after the initial approval, the Tisbury Senior Center, a community forum for people of all ages and political persuasions, denied Wayfield, a World War II veteran, his constitutional right of free speech regarding a discussion group concerned with World War II history, when it learned of Wayfield's historical revisionist perspective?

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2. Whether the Appellate Court, First Circuit, when reversing the dismissal of the U.S. District Court of the petitioner's suit regarding his banning from the library, failed to note that the

Vineyard Haven Public Library also denied Wayfield's and the people of Tisbury's constitutional right of freedom to read, by violating its own by-laws and the "Library Bill of Rights" and by imposing ad hoc and discriminatory censorship so as to suppress the knowledge of significant scholarship of historical revisionism concerning the World War II?

PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties to the proceedings in the First Circuit.

TABLE OF CONTENTS

QUESTIONS PRESENTED ii

PARTIES TO THE PROCEEDINGS iv

TABLE OF CONTENTS v

OPINION BELOW 2

JURISDICTION 3

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 4

STATEMENT OF THE CASE:

First Cause of Action 5

- Background 5

- Facts of the cause/case . . 8

Second Cause of Action 11

- Background 11

- Facts of the cause/case 11

REASONS FOR GRANTING THE WRIT 16

CONCLUSION 19

INDEX TO APPENDICES

Judgment of the Court of Appeals, First Circuit, November 29, 1993 . . . A-1

Court of Appeals Denial for Rehearing, January 4, 1993 . . . . . A-15

Judgment of the U.S. District Court for the First Circuit, March 29, 1993 . . . . . A-16

Amendments I and XIV to the U.S. Constitution A-43

Civil Rights, 42 U.S.C. Sections 1983, 1985 and 1988 . . . . . A-45

Letter by Wayfield to Tisbury Senior Center A-50

Letter from Tisbury Council on Aging A-53

Library Bill of Rights A-55

Rules for the Vineyard Haven Public Library A-57

By-Laws for Vineyard Haven Public Library A-60

The Freedom to Read Statement (abbreviated) by the American Library Council and the Association of American Publishers' Freedom to Read Committee . . . A-62

The New York Times article: Don't Cut Off All Debate About the Holocaust A-70

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IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1993

DAVID WAYFIELD, PETITIONER

vs.

TOWN OF TISBURY,

MARJORIE CONVERY, RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

Petitioner, David Wayfield, respectfully prays that the Writ of Certiorari be issued to review the

decision of the U.S. Court of Appeals for the First Circuit which remanded for trial petitioner's claim "in regard to the allegedly politically motivated banning of Wayfield from the Vineyard Haven Library" (A-1) but refused to acknowledge that the Town of Tisbury, under the color of law, abrogated the First Amendment and suppressed the freedom of speech for Wayfield and those who respect anti-Zionist Jews, those who support Holocaust revisionist scholarship and the 22% of adult Americans for whom "[it] seems possible [that the Holocaust] didn't happen" (source: Roper Organization survey of 922 adults Nov. 14-21, 1992, sponsored by the American Jewish Committee).

OPINIONS BELOW

The opinion of the Court of Appeals

is reported as David Wayfield vs. Town of Tisbury and appears in Appendix A-1 of this Petition. The Court of Appeals denial of the Petition for Rehearing appears in Appendix A-15. The unpublished written opinion of the U.S. District Court of the First Circuit of Massachusetts appears in Appendix A-16 to this Petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on November 29, 1993. A timely Petition for Rehearing was filed on December 13, 1993. The Court of Appeals' denial of the Petition for Rehearing was issued January 4, 1994. This Court's jurisdiction is invoked under Title 42 U.S.S. Sections 1983, 1985 and 1988 and the First and Fourteenth Amendments to the Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments 1 and 14 to the U.S. Constitution are set forth in Appendix A-43. Sections 1983, 1985 and 1988 of Title 42 are set forth in Appendix A-45.

STATEMENT OF THE CASE

FIRST CAUSE OF ACTION:

The issue involves abridgment of the right of free speech under color of state law to World War II (WW II) veteran wishing to express in a public forum his Holocaust revisionist views.

BACKGROUND:

There is a dearth of evidence of mass graves of about 2,000,000 Jews shot but not cremated during WW II, inadequate forensic (toxicological) evidence of gassing of additional 4,000,000 Jews, and astounding lack of the intensely-sought-for-singular wartime Nazi document explicitly ordering the Final Solution. Faced with these facts establishment's Holocaust exterminationist scholars scorn physical evidence and rely mostly on eyewitness testimonies as the final proof

of mass extermination during WW II. In recent years even some concerned exterminationists such as Princeton Professor Arno Mayer disappointingly acknowledged that the "sources for the study of the gas chambers are at once rare and unreliable," while the foremost anti-Revisionist scholar Pierre Vidal-Naquet warned: "Most of what is known [about gas chambers] is based on the depositions of Nazi officials and executioners at postwar trials and on the memory of survivors and bystanders. This testimony must be screened carefully . . . ."

On March 29, 1993, the District Court in Boston explained that: "Holocaust Revisionists contend that traditional accounts of Jewish suffering at the hands of Adolph Hitler and claims of state sponsored racial genocide are greatly

exaggerated." (A- 22) Two weeks later, on April 18, 1993, the American Jewish Committee announced that about 22% of adult Americans have doubts about the extent of the Holocaust and apparently consider the quest of the Holocaust revisionist scholars for the physical evidence of the homicidal mass gassings and mass executions by firearms as credible. In distinction from the exterminationists, Holocaust revisionists put more credence into evidence from the field of forensic science, archeology, and analysis of wartime aerial photography, which seem to contradict the exterminationist story. Moreover, through document analysis they question authenticity of the few documents suggestive of German policy of homicidal mass gassings and scorn the accuracy of

eyewitness testimony. The inaccuracy of such testimonies has been recently acknowledged on 2/5/94 in The New York Times with a title "[Holocaust Survivor] Syndrome Known Since '52," while the appropriateness of debate was advocated by the three-column-wide editorial title "Don't Cut Off All Debate On The Holocaust" espoused by The New York Times in the January 1, 1994, issue (A-70). The recent scholastic debate between Holocaust revisionist and exterminationist appears similar to the controversy between creationists and evolutionists which culminiated in the famous, so-called "Monkey trial" of John Scopes in Tennessee in 1925.

FACTS OF THE CASE:

The Tisbury Senior Center (TSC) is a major, indoor community forum used by

politicians like Congressman Gerry Studds, celebrities like Mike Wallace, and even school children. It is controlled and owned by the Town of Tisbury while the supervision Council of Aging of Town of Tisbury (CATT) is appointed by Tisbury's three Selectmen which all in turn are regulated by the State of Massachusetts.

In December 1991, the director of TSC had solicited from Wayfield, a WW II veteran, the formation of a discussion group that would review the history of WW II. When in 1992 it became apparent to TSC and CATT that Wayfield would not limit his discussion to the current, "politically correct" exterminationist version of WW II history, but that he wished to talk about the WW II and the Holocaust from the historical revisionism point of view (A-51), in February 1992,

the Chairman of the Town of Tisbury Council on Aging wrote that "the Board" discussed Wayfield's proposal in depth and decided that "Historical Revisionism" should be discussed elsewhere (A-53).

SECOND CAUSE OF ACTION:

The issue involves discriminatory censorship and arbitrary exclusion from a public library of WW II and Holocaust revisionist printed and audio-video materials and/or lecturers, occurring on the background of an intense promotion of Holocaust exterminationist materials and speakers.

BACKGROUND: (see the first cause of action)

FACTS OF THE CASE:

The Vineyard Haven Public Library (VHPL) is ruled by its by-laws adopted in August of 1988 (A-60) which compel it to follow the "Library Bill of Rights" amended by the American Library Association in 1980 (A-55), and the "Freedom to Read" Statement of the American Library Association's Office for

Intellectual Freedom (A-62). The VHPL is owned by the Town of Tisbury and both are regulated by the State of Massachusetts.

The Library Bill of Rights demands that the VHPL and all "[l]ibraries should provide material and information presenting all points of view on current and historical issues and materials should not be proscribed or removed because of partisan or doctrinal approval." (A-55) Moreover, the VHPL and all "[l]ibraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas." (A-56)

In its effusive condemnation of "suppression," "censorship" and "purges" of books and materials at the libraries, the "Freedom to Read" Statement goes as far as to reproach subreptitious

discrimination and censorship which result in "the shadow of fear cast by these pressures [which] leads, we suspect, to even larger voluntary curtailment of expression by those who seek to avoid controversy." (A-64)

The VHPL contains an estimated 12 feet of shelf space of books, some in duplicate, devoted exclusively to discussion of the Holocaust from the point of view of exterminationism. VHPL did not stock in the past or now a single book or audio-visual material expressing views of Holocaust revisionists.

Moreover, over the years the VHPL invited numerous speakers with exterminationist views such as Kathrine Graham, Art Buchwald and Mike Wallace, all of whom oppose the scholarship of historical and especially Holocaust revisionism.

In December of 1990 the petitioner approached the director of the VHPL with a suggestion to restore the balance to the library's collection in regard to the WW II history and the Holocaust and purchase or at least accept as a gift scholarly revisionist materials.

In January 1991, this petitioner's request was rejected, and immediately he was slandered for "stealing" and accused of "assault," the latter a rather difficult deed for an unarmed, elderly, post-myocardial-infarction individual. In this regard the Court of Appeals First Circuit opined, and the respondent VHPL did not object, that "it is possible to infer that the accusation of stealing was a pretext and that the real reason for the 'assault' and the Director's letter banning Wayfield [from the library], was

animus toward Wayfield's political views." (A-12)

In February 1991, the Tisbury Board of Trustees proposed and approved a set of "Library Rules" in which items 5 and 6 were prompted by the incident with the petitioner. (A-58)

In addition, there is an entire sleuth of instances of discriminatory actions perpetrated by the VHPL and Town of Tisbury municipal agents. The discriminatory notoriety of the Town of Tisbury is best expressed in its Brief to the District Court in Boston which blatantly states that:

> "Wayfield identifies himself as a Christian European-American which is not a Constitutionally protected class!"

of which even the unsympathetic District Court in Boston decreed that,

> "Town's statement in its brief to

> this effect is gross misstatement of the law and is patently false. Except under very limited circumstances, the government must act in a race-blind, religion neutral manner with regard all citizens." (A-37-38)

REASONS FOR GRANTING THE WRIT

In Reference to the First Cause of Action:

Since the actions of Tisbury officers were carried out under the color of state law, the petitioner believes that these decisions were illegal because according to the First Amendment state and/or municipal agents may not deprive a citizen of the U.S. or other persons within their jurisdiction of any rights or privileges secured by the Constitution and laws (A-43-45).

Wayfield had a constitutional right to express at TSC his convictions and those of about 22% of adult Americans who doubt the extent of the Holocaust because

the TSC is a public forum. Indeed, aside exterminationist opinions, various controversial views were invited and allowed to be aired many times at the same forum. Speakers of various creeds, races (such as a black renaissance author Dorothy West or activists of the local Wampanoag Tribal Council) and sexual orientation (such as Congressman Gerry Studds) lectured at the TSC. The written rebuke of Wayfield by the Chairman of CATT (A-53) explicitly proves that discrimination against the petitioner was conducted because of petitioner's principles effectively abridging his freedom of speech. Thus, under the color of state law, TSC and CATT unlawfully established and enforced ad hoc and discriminatory ruling which denied Wayfield this public forum.

Because even prior to discovery, the abridgment of the petitioner's freedom of speech and the Tisbury citizens' freedom to know is supported by non-conclusory evidence, the petitioner respectfully pleads that the Certoriari Writ be issued, so the U.S. Supreme Court might allow Wayfield due process of law by means of a jury trial.

In Reference to the Second Cause of Action:

The facts of the case indicate that the VHPL is a public institution whose officers are regulated by the state and that they flagrantly abridged its own by-laws, the "Library Bill of Rights," the "Freedom to Read" statement and the rights and privileges bestowed on the petitioner by the First Amendment. Because even

prior to discovery, the abridgment of the petitioner's freedom of speech and the citizens of Tisbury freedom to read is supported by factual evidence, the petitioner respectfully pleads that the Certoriari Writ be issued, so the U.S. Supreme Court might allow Wayfield due process of law by means of a jury trial.

CONCLUSION:

For the reasons stated, the Writ of Certioari should issue to review the judgment of the United States Court of Appeals for the First Circuit.

Respectfully submitted,

David Wayfield

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UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 93-1535

DAVID WAYFIELD

Plaintiff, Appellant,

v.

TOWN OF TISBURY

Defendant, Appellee.

JUDGMENT

Entered: November 29, 1993

This cause came on to be submitted on the briefs and the original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The district court's dismissal of all Wayfield's claims except those against Ms. Convery and the Board of Trustees in regard to the allegedly

politically motivated banning of Wayfield from the Vineyard Haven Library is affirmed. As to those claims the dismissal of the complaint is vacated, the denial of the motion to amend the complaint is reversed and the cause is remanded to the district court for further proceedings in accordance with the opinion issued this date.

No costs.

By the Court:

Francis P. Scigliano

Clerk.

[cc: Mr. Wayfield and Ms. Longman]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 93-1535

DAVID WAYFIELD

Plaintiff, Appellant,

v.

TOWN OF TISBURY,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Walter Jay Skinner, U.S. District Judge]

Before

Cyr, Circuit Judge,

Bownes, Senior Circuit Judge,

and Boudin, Circuit Judge.

David Wayfield on brief pro se.

Tracie L. Longman and Roche, Carens & DeGiacomo on brief for appellee.

November 29, 1993

Per Curiam. Appellant David Wayfield alleges that the Town of Tisbury, in conjunction with numerous private parties, deprived him of his constitutional rights in violation of 42 U.S.C. § 1983. After the defendants filed a motion to dismiss the entire complaint, Wayfield moved to amend his original complaint. This motion was denied by the district court on the ground that the amended complaint would also be subject to dismissal. Wayfield appeals the dismissal of his civil rights action. With one exception, we affirm the dismissal of Wayfield's claims.

In dismissing Wayfield's civil rights claims, the district court seems to rely in part on the doctrine that civil rights complaints must be pled with heightened particularity. See Dartmouth Review v. Dartmouth College, 889 F.2d 13, 16 (1st

Cir. 1989). However, the Supreme Court has recently cautioned that civil rights claims are to be subject only to normal standards of pleading. Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 113 S.Ct. 1160, 1163 (1993). The proper standard for assessing the adequacy of the instant complaint then is whether, accepting the factual allegations in the complaint as true, and construing these facts in the light most favorable to the plaintiff, the pleading shows any facts which could entitle plaintiff to relief. See, e.g., Gooley v. Mobil Oil Corp., 851 F.2d 513, 514 (1st Cir. 1988). Moreover, as a pro se plaintiff, Wayfield is entitled to have his complaint "liberally construed." Estelle v. Gamble, 429 U.S. 97, 106 (1976).

Even under this more generous standard, most of Wayfield's causes of action are subject to dismissal for the reasons stated in the district court opinion, dated March 29, 1993. However, we find that the amended complaint, liberally construed, does state a cause of action under section 1983. We therefore reverse the district court's denial of Wayfield's motion to amend his complaint and vacate the dismissal order in part.

According to his amended complaint, on December 14, 1990, Wayfield went to the Vineyard Haven Public Library where he spoke with the Library Director, defendant Marjorie Convery, and attempted to persuade her to stock several "revisionist" books and periodicals. Ms. Convery did not respond and "seemed very angry but controlled." Within an hour,

Wayfield was falsely accused by Ms. Convery of stealing a menorah from the library. When he refused her request to open his shoulder bag to be searched, Wayfield was "assaulted" by Convery. On December 18, Wayfield received a certified letter from Convery informing him that "[a]s a result of the disruptive incident that occurred on Saturday . . . your presence on the property or in the building will no longer be permitted." On December 20, he received another letter dated December 19, 1990, from the Board of Trustees for the Vineyard Haven Public Library, announcing that, due to the "disruptive incident," he was banned from the library until April 2, 1991. After Wayfield returned to the library in January 1991, he was charged with trespassing. The charges were eventually

dropped. Wayfield admits to the existence of a disturbance but alleges that he was the victim of an illegal assault by Convery. He further alleges that the ban imposed upon him was due not to any disturbance but was in retaliation for his political views.

To state a cause of action under 42 U.S.C. § 1983, a plaintiff must allege sufficient facts to support a determination "(i) that the conduct complained of has been committed under color of state law, and (ii) that [the alleged] conduct worked a denial of rights secured by the Constitution or laws of the United States." Chongris v. Board of Appeals, 811 F.2d 36, 40 (1st Cir.), cert. denied, 483 U.S. 1021 (1987). Liberally construing the complaint and accepting its allegations as true, we find that the

complaint states a cause of action under 42 U.S.C. § 1983 against Ms. Convery. First, as evidenced by her letter of December 18, 1990, banning Wayfield from the library, Ms. Convery purported to act under the color of state law. Second, the banning of Wayfield because of his political views would appear to be a violation of his constitutional rights. Cf. Nestor Colon Medina & Sucesores, Inc. v. Custodio, 964 F.2d 32, 40 (1st Cir. 1992) (denial of land use permit in unjustifiable retaliation for expression of political views constitutes a first amendment violation).

> [While a] State or its instrumentality may, of course, regulate the use of its libraries or other public facilities . . . it must do so in a reasonable and

> nondiscriminatory manner, equally applicable to all and administered with equality to all . . . . And it may not invoke regulations as to use --whether they are ad hoc or general --as a pretext for pursuing those engaged in lawful, constitutionally protected exercise of their fundamental rights.

Brown v. Louisiana, 383 U.S. 131, 142-43 (1966).

To be sure, the allegations that the assault by Ms. Convery and her banning him from the library were motivated by animus toward Wayfield's political views are conclusory. Such conclusory allegations become facts for pleading purposes "only when such conclusions are logically compelled, or at least supported, by the stated facts, that is, when the suggested

inference rises to what experience indicates is an acceptable level of probability." Dartmouth Review v. Dartmouth College, 889 F.2d 13, 16 (1st Cir. 1989).

The complaint does allege facts which, albeit circumstantial, support the conclusion that the banning by the Director was politically motivated. Since the state of mind of an actor often "must be inferred from the things [a party] says or does[,]" Anthony v. Sundlun, 952 F.2d 603, 605 (1st Cir. 1991), circumstantial evidence alone can support a conclusion or discriminatory intent. Id.

First, Wayfield alleges that on the day of the incident which led to the banning he discussed with the Director his political views. Not only was she thus aware of those views but Wayfield alleges

that she "seemed very angry but controlled." He then alleges that "within an hour" he was accused falsely of stealing a menorah and was "assaulted" by the Director. From these facts, it is possible to infer that the accusation of stealing was a pretext and that the real reason for the "assault" and the Director's letter banning Wayfield was animus towards Wayfield's political views.

We also find that, although the question is very close, the complaint alleges a cause of action against the Town of Tisbury as well. According to the complaint, liberally construed, the Board of Trustees of the Vineyard Haven Library banned Wayfield from the library between December 19, 1990, and April 2, 1991 because of his political views. While the Board purported to act only because of the

"disruptive incident" which occurred between Wayfield and Convery, the complaint alleges that this incident was only a pretext, a conclusion we have decided is supported by the facts alleged in the complaint. We do not find the possible inference that the Board, acting on the basis of information provided by the Director, may have been aware of, and even shared, the Director's intent, to be so speculative as to require dismissal of this case without any further inquiry. Since the Board of Trustees is the body responsible for managing the library, see Mass. Gen. L. ch. 78, § 11, any illegal acts it may have committed would expose the town to liability. See Pembaur v. Cincinnati, 475 U.S. 469, 483-84 (1986) (municipality is liable under section 1983 even for "a single decision to take

unlawful action . . . [which is made] by the official or officials responsible for establishing final policy with respect to the subject matter in question.").

We affirm the district court's dismissal of all Wayfield's claims except those against Ms. Convery and the Board of Trustees in regard to the allegedly politically motivated banning of Wayfield from the Vineyard Haven Library. As to those claims, we vacate the dismissal of the complaint, reverse the denial of the motion to amend the complaint, and remand to the district court for further proceedings.

Affirmed in part; vacated in part and remanded. No costs.

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 93-1535

DAVID WAYFIELD

Plaintiff, Appellant,

v.

TOWN OF TISBURY

Defendant, Appellee.

Before

Breyer, Chief Judge,

Bownes, Senior Circuit Judge,

Torruella, Selya, Cyr and Boudin,

Circuit Judges.

ORDER OF COURT

Entered January 4, 1994

Appellant's petition for rehearing en banc is denied.

By the Court:

Francis P. Scigliano

Clerk

[cc: Ms. Longman and Mr. Wayfield]

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

DAVID WAYFIELD,

Plaintiff,

v. CIVIL ACTION

No. 92-11461-S

TOWN OF TISBURY,

Defendant.

ORDER ON DEFENDANT'S MOTION TO DISMISS

AND RELATED MOTIONS

March 29, 1993

SKINNER, S.D.J.

Plaintiff David Wayfield, a resident of the Town of Tisbury, Massachusetts,

filed this pro se action alleging a pattern of discrimination and harassment. Plaintiff, a self-described white Christian European-American patriot, contends that numerous private parties in association with the defendant Town of Tisbury initiated a racist and religious conspiracy to deprive plaintiff of his constitutional and statutory rights due to his efforts to educate the public to the corrupting influence of Zionists on American values and interests.

Rather than answering the complaint, defendant filed a motion to dismiss the complaint in its entirety. Plaintiff then moved to amend his complaint to add additional parties and claims, but did not actually submit the proposed amended complaint. I denied that motion without prejudice. Plaintiff subsequently

submitted a 50-page amended complaint and several new motions. Plaintiff requests that this court (1) appoint counsel to assist plaintiff with his claims; (2) schedule a hearing so that public trial can be expedited; (3) take all steps necessary to inform the taxpayers of Tisbury of this action because the "local corrupt media' have refused to cover the case; (4) reprimand the court clerk for mailing a prior order of this court six days after its issuance; and (5) allow the amended complaint.

Wayfield's initial complaint asserts claims under the First Amendment to the U.S. Constitution and under 42 U.S.C. §§ 1983, 1985, 42 U.S.C. § 2000a, unspecified provisions of the Civil Rights Act of 1964, unspecified provisions of the Hate Crimes Statistics Act, and the Racketeer

Influenced and Corrupt Organizations Act. His amended complaint names eight new defendants and adds claims under the Second, Fourth, Fifth, Sixth, Ninth, Tenth, and Fourteenth Amendments, 42 U.S. C. § 1986, 42 U.S.C. §§ 2000b, 2000d, and unspecified provisions of the Genocide Convention. The complaint seeks $5,000,000 in compensatory damages, $5,000,000 in punitiuve damages, and more than ten separate injunctions.

Before reaching the merits of the pending motions, I summarize Wayfield's claims. The language, allegations, and characterizations are the plaintiff's, not my own. Plaintiff's troubles began as early as 1983. On July 27, 1983, the Unitarian Church of Tisbury hosted a talk by Rabbi Jerome Davidson. After Wayfield challenged the church to permit an

American Arab as a speaker, several members of the "local Zionist community" summoned the police. Wayfield apparently was not arrested.

In 1986, Wayfield was the object of several unfavorable newspaper stories that focused on his plan to build a garden at his home "to honor distinguished anti-Zionist Jewish authors and patriots." In one local news story, a Rabbi was quoted as saying, "I hope Islanders will take steps to thwart plans for the garden." Wayfield claims that the Town heeded that call by raising his property taxes. Following publication of these stories, Wayfield's property taxes increased nearly threefold. The 1986 appraised value of his land was $31,200; the 1987 assessment jumped to $89,600. Wayfield quotes an unidentified city tax assessor as

attributing the increased taxes to his planned garden. He suffered great stress after learning of the increased assessment and suffered a heart attack several days later. Wayfield filed an application for an abatement of his real estate taxes, citing comparable properties that had lower per square foot assessments. The application was rejected in 1987.

Between 1987 and 1989, Wayfield was the frequent victim of harassment and discrimination on account of his political views. He was unable to arrange speaking engagements for anti-Zionist authors because of "the totalitarian, racist Zionists." Wayfield was targeted by the Anti-Defamation League of B'nai B'rith (the "ADL") in its summer 1989 research report for his views on Holocaust

revisionism.[1] Wayfield describes the ADL, and several other Jewish organizations, as "hate organizations with genocidal propensities towards European-Americans." Wayfield faced assorted difficulties from "Zionist interference and suppression" when operating his bookmobile and when distributing pamphlets at public events. Apparently, private citizens called the police several times to have Wayfield removed from private property, but he was not arrested. In 1990, Wayfield was denied membership in the Tisbury chapter of the American Legion because he refused to answer a question regarding "the cult

---

[1] Holocaust Revisionist contend that traditional accounts of Jewish suffering at the hands of Adolph Hitler and claims of state sponsored racial genocide are greatly exaggerated. Wayfield is fighting to ensure that "the Jewish holocaust no longer be used as a money-making racket to suck money out of the American taxpayer."

now known as the Holocaust."

On December 11, 1990, Wayfield was called by the director of the Vineyard Haven Public Library of Tisbury and asked if he knew what happened to a menorah that had been displayed in the library to celebrate Hanukkah, a Jewish holiday. Wayfield denied involvement in the disappearance. Several days later, Wayfield met with the library director to encourage the library to stock revisionist materials. Following the meeting, Wayfield stayed in the library to perform research. Within an hour, the director accused Wayfield of stealing a second menorah that had been displayed in the area where Wayfield was doing research. Wayfield refused to permit a search of his shoulder bag. After Wayfield left the library, he was confronted by a Tisbury

police officer regarding the alleged theft. Wayfield denied any involvement and requested to go to his home so that he could call his lawyer. Several police arrived at Wayfield's home and peeked inside the windows of his home. Wayfield complains that he was treated as a fugitive from justice, but does not allege that his home or his person were actually searched. Wayfield was not arrested.

The library director and the library's board of trustees later informed Wayfield by certified mail that due to his disruptive conduct his library privileges had been suspended until April 2, 1991. He was not provided with notice of the suspension or a hearing to challenge the decision. The letters did not charge him with any crime. Wayfield returned to the library several times during the

suspension period and was eventually charged with trespassing. Wayfield attended several pre-trial conferences and declined a plea before the charges were dropped on January 31, 1992.

While the charges were pending against Wayfield, he was the victim of an attempted murder. On November 6, 1991, while Wayfield was walking near the Tisbury police station, an assassin ran past him, striking him on his left arm. Wayfield reported to police that a hit man had unsuccessfully attempted to inject something into his arm. He attributed the attack to Israel's secret police or their trained terrorist agents in the U.S. who had learned that Wayfield planned to sue the Town for malicious prosecution related to the library incident. Wayfield explains that since the hit man planned to

kill him near the Tisbury police station it is obvious that the assassin felt he could rely on the cooperation of someone connected to the police. The Tisbury police investigated the incident through December 1991, at which time the investigation was terminated. Wayfield claims the police investigation was inadequate for two reasons: the Police Chief "pandered to the Zionist community" and the White House may have directed the Chief to terminate the investigation "to avoid placing blame for the incident on pro-Israeli militants."

In January 1992, Wayfield was invited by the Tisbury Senior Center to discuss the history of World War II. After Wayfield submitted an outline of his talk that focused on revisionist history, the Center declined to sponsor the program.

In February 1992, Wayfield's application for a license to carry a firearm was rejected by the Tisbury Chief of Police. The Chief explained that he doubted Wayfield's suitability to carry a firearm and that the reported attempted murder was insufficient to support the application. Wayfield complains that the Town will not protect him from murder nor will it allow him to protect himself.

Finally, Wayfield asserts that the Vineyard Haven Public Library discriminates against White, non-Jewish patriots of European origin who are promoters of Western heritage. Through its selection of books, the library "plays up" the Jewish Holocaust under the Third Reich and "slavishly panders to the Zionist community." Wayfield also claims that children in the Tisbury public

schools are "brainwashed by Zionist textbooks" that debase the Christian European-American majority.

DISCUSSION

1. The Motion to Dismiss: Rule 12(b)(6)

Fed. R. Civ. Proc. 12(b)(6) governs the standard for deciding the motion to dismiss now before me. Accordingly, I must accept all well-pled factual averments as true, and draw all reasonable inferences therefrom in the nonmovant's favor. McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 276 (1976); Gooley v. Mobil Oil Corp., 851 F. 2d 513, 514 (1st Cir. 1988). Moreover, I will liberally construe the complaint to accommodate plaintiff's pro se status. Estelle v. Gamble, 429 U.S. 97, 106 (1976). In so doing, however, I must "eschew any

reliance on bald assertions [and] unsupportable conclusions." Dartmouth Review v. Dartmouth College, 889 F.2d 13, 16 (1st Cir. 1989) (quoting Snowden v. Hughes, 321 U.S. 1, 10 (1944). Plaintiff is obligated to set forth in his complaint "factual allegations, either direct or inferential, regarding each material element necessary to sustain recovery under some actionable legal theory." Gooley, 851 F.2d at 515. Only if the complaint, so viewed, presents no set of facts that could entitle the plaintiff to recovery will I allow the motion. Conley v. Gibson, 355 U.S. 41, 45-48 (1957); Gooley, 851 F.2d at 514. However, "minimal requirements are not tantamount to nonexistent requirements. The threshold [for stating a claim] may be low, but it is real . . ." Gooley, 851

F.2d at 514.

Our court of appeals has noted the particular importance of demanding specific factual allegations where civil rights violations lie at a suit's core:

> Gauzy generalities, unsupported conclusions, subjective characterizations, and problematic suppositions can sprout as easily as crabgrass in an imaginative litigant's (or lawyer's) word processor. Therefore, to avoid tarring defendants' reputations unfairly and to prevent potential abuses, we have consistently required plaintiffs to outline facts sufficient to convey specific instances of unlawful discrimination.

Dartmouth, 889 F.2d at 16 (citations omitted).

II. Wayfield's Numerous Claims

I have carefully reviewed plaintiff's allegations made in both the initial and the amended complaints. Wayfield's complaint, a tale of woe spanning nearly ten years, purportedly gives rise to claims for relief under more than fifteen separate constitutional and statutory provisions. Plaintiff, however, never explains what facts give rise to which claims, and never identifies even one statutory or constitutional standard for stating a claim under any relevant statute or constitutional amendment. Though Wayfield is a pro se plaintiff and cannot reasonably be expected to state his claims with the same precision as an attorney, neither is it this court's role to wade through Wayfield's nebulous narrative in the hope of discovering some legally

cognizable claim. McDonald v. Hall, 610 F.2d 16, 19 (1st Cir. 1979) ("Our duty to be 'less stringent' with pro se complaints does not require us to conjure up unpled allegations."). It works no injustice to require even a pro se plaintiff to plead specific facts backing up alleged civil rights violations. Glaros v. Perse, 628 F.2d 679, 684 (1st Cir. 1980) (affirming dismissal of a pro se complaint because plaintiff failed to describe briefly the unlawful activities of each defendant and how that conduct violated his constitutional rights).

Similarly, the defendant cannot reasonably be expected to address every frivolous claim and insignificant fact that the plaintiff has raised in his complaint. Nonetheless, the defendant has done a commendable job of framing a

coherent and persuasive response to the voluminous complaint. With one notable exception discussed below, defendant's memorandum in support of the motion to dismiss fairly and accurately summarizes the law on Wayfield's non-frivolous claims and properly concludes that Wayfield has failed to state specific factual allegations, either direct or inferential, regarding each material element necessary to sustain recovery under some actionable legal theory.

Only one claim raised in plaintiff's complaint warrants individual discussion: the increased property taxes. Where a state agent, acting under color of law, deprives another person of a right secured by the constitution, 42 U.S.C. § 1983

permits a private cause of action.[2] I understand plaintiff's allegations surrounding his 1987 property tax assessment to assert a claim under § 1983. I need not address the sufficiency of plaintiff's allegations, however, because the claim is plainly barred by the applicable statute of limitations.

A district court adjudicating a § 1983 claim must apply the statute of limitations applicable to personal injury actions under the law of the forum state,

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[2] The Statute provides, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C.A. § 1983 (West 1981).

in this case Massachusetts. Wilson v. Garcia, 471 U.S. 261, 276-80 (1985); Street v. Vose, 936 F.2d 38, 39 (1st Cir. 1991). The relevant Massachusetts statute establishes a three year statute of limitations. Mass. Gen. L. Ann. ch. 260, § 2A (West 1992) (actions in tort to recover for personal injuries shall be commenced only within three years after the cause of action accrues). Wayfield received notice of the increased assessment in December 1986 and his application for abatement was formally denied on June 16, 1987. Wayfield did not initiate suit until June 15, 1992, more than two years after the statutory period expired.

Wayfield's remaining claims are either frivolous or plainly lack sufficient particularity upon which I

could base an informed judgment. I do not address individually the numerous allegations and claims, but summarize the various fatal defects. First, many of his claims rely on allegedly discriminatory actions of private actors, as opposed to state officials. For those private individuals, however, Wayfield alleged no facts to support any relationship to or conspiracy with the government. Glaros, 628 F.2d at 685. Nor has Wayfield alleged specific facts to state a claim for unlawful private discrimination under any of the various statutes that he cites.

Second, with regard to governmental actors, Wayfield's complaint rests entirely on speculation and conjecture. He fails to make any nonconclusory allegations to indicate that he was subjected to unlawful governmental

discrimination because of his race, religion, or speech. Plaintiff's claims take form only when otherwise legitimate governmental action is viewed through a self-fulfilling, conspiratorial lens. The federal rules and our court of appeals, however, do not permit a plaintiff to rest claims on wholly conclusory grounds. Dartmouth, 889 F.2d at 16; Gooley, 851 F.2d at 514. There are simply no specific allegations to support any form of government conspiracy, to sustain any claim of a discriminatory governmental policy or custom, or to indicate that Wayfield was subjected to unlawful discrimination as opposed to lawful regulation of disruptive conduct.

This is not to say that plaintiff's claims fail because white, Christian European-Americans are not protected by

the constitution. The Town's statement in its brief to this effect is a gross misstatement of the law and is patently false. Except under very limited circumstances, the government must act in a race-blind, religion-neutral manner with regard to all citizens. Indeed, the Supreme Court has repeatedly struck down governmental programs which were intended to benefit racial minorities because the programs failed to comport with the exacting constitutional requirements imposed on race conscious behavior and/or risked trammeling the rights of white citizens.[3] In this case, Wayfield's claims

[3] E.g. Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 564-65 (1990) (finding benign race conscious measures mandated by Congress constitutionally permissible only to the extent that they serve important governmental objectives and are substantially related to the achievement of those objectives); Richmond v. J.A. Croson Co., 488 U.S. 469, 505 (1989)

fail because he has relied entirely on conclusory allegations of discrimination and conspiracy.

Finally, Wayfield frequently explains that his claims will be fleshed out after having the benefit of discovery. However,

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(striking down a minority set aside program because "the city has failed to demonstrate a compelling interest in apportioning public contracting opportunities on the basis of race"); Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986) (finding unconstitutional a plan which granted preferential protection against layoffs to some minority employees on the basis of their race or national origin); Fullilove v. Klutznick, 448 U.S. 448, 491 (1980) ("Any preference based on racial or ethnic criteria must necessarily receive a most searching examination to make sure that it does not conflict with constitutional guarantees."); Regents of Univ. of California v. Bakke, 438 U.S. 265, 291 (1978) ("Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination."). In short, there can be no doubt that the constitution protects all persons against invidious government classifications based on race, national origin, and religion, regardless of whether the complainant is black, white, Christian, or Jew.

a plaintiff is not entitled to discovery merely to find out whether or not there is a factual basis for his claim. E.g., MacKnight v. Leonard Morse Hosp., 828 F.2d 48, 52 (1st Cir. 1987). Plaintiff has failed to allege sufficient facts to state a claim and is not entitled to use the costly and time consuming discovery procedure as a "fishing expedition." Id.

Even in light of the favorable standard of review on a motion to dismiss and plaintiff's status as a pro se plaintiff, I can find no basis for allowing the suit to proceed. Defendant's motion to dismiss is ALLOWED. As the amended complaint would also be subject to dismissal, plaintiff's motion to amend the complaint is DENIED. Plaintiff's motion to appoint counsel, to hold a hearing to expedite trial, and to inform the

taxpayers of this action are DENIED as moot. Finally, the motion to reprimand the court clerk is DENIED.

Walter Jay Skinner

United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

DAVID WAYFIELD

JUDGMENT IN A CIVIL CASE

v.

TOWN OF TISBURY

CASE NUMBER: 92-11461-S

IT IS ORDERED AND ADJUDGED pursuant to the Court's Order on Defendant's Motion to Dismiss and Related Motions dated March 29, 1993, that the complaint in the above entitled case be, and the same hereby is, DISMISED. SO ORDERED.

March 30, 1993 — Robert J. Smith, Jr.

Date — Clerk

Philip L. Lyons

(By) Deputy Clerk

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process

of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §§ 1983, 1985, 1988

§1983. Civil Action for Deprivation of Rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

§1985. Conspiracy to Interfere With Civil Rights.

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purposes of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purposes of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support

or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

§1988. Proceedings in Vindication of Civil Rights.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so

far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found quilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

A-50

January 31, 1992

TO:

Joyce Stiles, Madeline Blakely and all Trustees of the Tisbury Senior Center

This is in response to your request today for a written description of the agenda for the discussion group which I have been planning for the Tisbury Senior Center.

This group will focus on revisionist history, primarily World War II, its causes and effects, as well as those who promoted it and those who profited from it. We will also discuss the opponents of this war such as those of the America-First movement. We will discuss the war after World War II, a war of looting, hanging and starvation against defenceless Europe.

We will examine the role of the

international bankers in promoting war as seen by revisionist historians.

We will examine the role of propaganda in getting people to go to war and how this propaganda was debunked after World War I but is still being promoted since World War II. We will examine this statement:

> "The propaganda against Japan was never allowed to take a racial form, lest the racial instincts of the American population be awakened into a storm that would sweep away the Culture-distorting regime in America."

We will examine the holocausts in various countries as seen by establishment historians versus revisionist historians. This will include holocausts of the American Civil War, the Boer War, World

War II and the war of the Soviet commissars versus the Soviet people. In respect to the latter we will examine the claims last year by Pravda and Isvestya that these commissars murdered 50 million people.

We will also examine what local students are being taught about World War II.

Yours truly,

/s/ David Wayfield

David Wayfield
P.O. Box 699
Vineyard Haven, MA 02568

A-53

COUNCIL ON AGING
TOWN OF TISBURY
POST OFFICE BOX 1239
VINEYARD HAVEN, MASSACHUSETTS 02568
(508) 696-4205

February 24, 1992

Dear Mr. Wayfield,

This letter is written in response to your proposal for the Council on Aging to sponsor a program entitled "Historical Revisionism". The Board discussed this proposal in depth and felt that we as a Council on Aging can not sponsor such a program because it does not fall within the realm of our programs that we offer seniors here at the center.

We want to thank you for your idea and proposal and hope that you will be able to offer this program maybe through Nathan Mayhew Seminars as a possible suggestion.

Sincerely,

/s/ A. Freeman Leonard Jr.

A. Freeman Leonard Jr., Chairman

Tisbury Council on Aging

A-55

LIBRARY BILL OF RIGHTS

The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.

1. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.

2. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

3. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.

4. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

5. A person's right to use a library should not be denied or abridged because of origin, age, background, or views.

6. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.

Adopted June 18, 1948.
Amended February 2, 1961, June 27, 1967, and January 23, 1980, by the ALA Council.

LIBRARY RULES

The Vineyard Haven Public Library offers opportunities for reading, general studies, cultural activities, and community information. The Library serves the community most effectively when everyone follows a few simple rules:

1. The Library is an area for quiet study. Any person who, in the opinion of the Library staff, is engaging in conduct inconsistent with the orderly operation of the Library will be asked to leave, and may have his or her privileges suspended at the discretion of the Director or the Library Trustees.

2. Please observe the NO EATING, SMOKING AND DRINKING rule.

3. Those who damage or deface library property or materials will be prosecuted.

4. It is larceny to remove ANY materials

from the Library without having them checked out first.

5. Misplacement of Library materials within the building may also result in loss of Library privileges.

6. The Library reserves the right to examine any bags or parcels.

7. Pets are not allowed in the Library.

8. Please respect others' right to privacy. Harassment by obnoxious, mischievous, or threatening language or behavior will not be allowed.

9. Parents are responsible for the behavior and supervision of their young children.

10. Appropriate clothing includes shoes and shirts.

Please understand that failure to abide by these rules may be grounds for expulsion or suspension of privileges.

Board of Trustees

The above Rules were approved by the Board of Trustees on Feb. 28, 1991. They were reviewed by Town Counsel and Executive Secretary of Tisbury. At their regular meeting on March 13, 1991, the Trustees voted unanimously to adopt the Rules as of April 2, 1991.

Respectfully submitted,

/s/ Barbara M. Donald

Barbara M. Donald, Secretary

A-60

BOARD OF TRUSTEES

VINEYARD HAVEN PUBLIC LIBRARY

- - - -

BY - LAWS

August 10, 1988

Article I - Name and Purpose

This organization shall be called "The Board of Trustees of the Vineyard Haven Library." It shall exist by virtue of the provisions of Chapter 78 of the General Laws of the Commonwealth of Massachusetts. It shall exercise the power(s) and authority granted to it, and assume the responsibilities delegated to it under said statute. Its purpose is to ensure, to the greatest extent possible, that the policies of the Library are promulgated to the Town, and the Library's objectives are met. These objectives include:

1. The assumption of a leadership role in

the community and serving as a center of information.

2. Indentifying community needs which the Library can fill.

3. The promotion of enlightened citizenship and continuing self-education.

4. Advocacy of the "Library Bill of Rights" and the "Freedom to Read" statement.

5. The provision of free library service to every resident of the community.

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Articles II to VII deleted.

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The above By-Laws of the Vineyard Haven Public Library (previously amended in 1982) were approved unanimously by the Board of Trustees on August 10, 1988.

/s/ Kathleen L. Sawyer

K. L. Sawyer
Secretary

THE FREEDOM TO READ (abbreviated)

The freedom to read is essential to our democracy. It is continuously under attack. Private groups and public authorities in various parts of the country are working to remove books from sale, to censor textbooks, to label "controversial" books, to distribute lists of "objectionable" books or authors, and to purge libraries. These actions apparently rise from a view that our national tradition of free expression is no longer valid; that censorship and suppression are needed to avoid the subversion of politics and the corruption of morals. We, as citizens devoted to the use of books and as librarians and publishers responsible for disseminating them, wish to assert the public interest in the preservation of the freedom to

read.

We are deeply concerned about these attempts at suppression. Most such attempts rest on a denial of the fundamental premise of democracy: that the ordinary citizen, by exercising critical judgment, will accept the good and reject the bad. The censors, public and private, assume that they should determine what is good and what is bad for their fellow-citizens.

We trust Americans to recognize propaganda, and to reject it. We do not believe they need the help of censors to assist them in this task. We do not believe they are prepared to sacrifice their heritage of a free press in order to be "protected" against what others think may be bad for them. We believe they still favor free enterprise in ideas and

expression.

We are aware, of course, that books are not alone in being subjected to efforts at suppression. We are aware that these efforts are related to a larger pattern of pressures being brought against education, the press, films, radio and television. The problem is not only one of actual censorship. The shadow of fear cast by these pressures leads, we suspect, to an even larger voluntary curtailment of expression by those who seek to avoid controversy.

Such pressure toward conformity is perhaps a natural to a time of uneasy change and pervading fear. Especially when so many of our apprehensions are directed against an ideology, the

We therefore affirm these propositions:

1. It is in the public interest for publishers and librarians to make available the widest diversity of views and expressions, including those which are unorthodox or unpopular with the majority.

2. Publishers, librarians and booksellers do not need to endorse every idea or presentation contained in the books they make available. It would conflict with the public interest for them to establish their own political, moral or aesthetic views as a standard for determining what books should be published or circulated.

3. It is contrary to the public interest for publishers or librarians to determine the acceptability of a book on the basis of the personal history or

political affiliations of the author.

4. There is no place in our society for efforts to coerce the taste of others, to confine adults to the reading matter deemed suitable for adolescents, or to inhibit the efforts of writers to achieve artistic expression.

5. It is not in the public interest to force a reader to accept with any book the prejudgment of a label characterizing the book or author as subversive or dangerous.

6. It is the responsibility of publishers and librarians, as guardians of the people's freedom to read, to contest encroachments upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large.

7. It is the responsibility of

publishers and librarians to give full meaning to the freedom to read by providing books that enrich the quality and diversity of thought and expression. By the exercise of this affirmative responsibility, they can demonstrate that the answer to a bad book is a good one, the answer to a bad idea is a good one.

This statement was originally issued in May of 1953 by the Westchester Conference of the American Library Association and the American Book Publishers Council, which in 1970 consolidated with the American Educational Publishers Institute to become the Association of American Publishers.

Adopted June 25, 1953; revised January 28, 1972, January 16, 1991, by the ALA Council and the AAP Freedom to Read

Committee.

A Joint Statement by:

American Library Association

Association of American Publishers

Subsequently Endorsed by:

American Booksellers Association

American Booksellers Foundation for Free Expression

American Civil Liberties Union

American Federation of Teachers AFL-CIO

Anti-Defamation League of B'nai B'rith

Association of American University Presses

Children's Book Council

Freedom to Read Foundation

International Reading Association

Thomas Jefferson Center for the Protection of Free Expression

National Association of College Stores

National Council of Teachers of English

P.E.N. - American Center

People for the American Way

Periodical and Book Association of America

Sex Information and Education Council of the U.S.

Society of Professional Journalists

Women's National Book Association

YWCA of the U.S.A.

A-70

The New York Times

EDITORIALS/LETTERS

Saturday, January 1, 1994

Don't Cut Off All Debate About the Holocaust

To the Editor:

Re "Holocaust Deniers Got More Than Visibility" (letters, Dec. 23), on the publishing of a Holocaust denier's ad in the Brandeis University paper:

As the debate develops on whether or not the Holocaust should be debated, let us recall that the word "holocaust" was first used in World War II on Christmas Eve 51 years ago.

While Jews over the centuries were repeatedly expelled from Western countries, they invariably found a safe haven in Poland. Jewish life, religion and culture, persecuted elsewhere,

flourished in Poland for 800 years, until World War II. Poland became the center of Judaism in Europe, with Vilnius called "Little Jerusalem." Today, the undeniable fact of the disappearance of Jewish cultural and especially religious life in Poland after World War II and the Holocaust cannot be questioned. However, as with any important historical event, the exact history of the Holocaust should continue to be studied, interpreted and debated.

Reinterpretation of the World War II Holocaust should not be labeled bigotry. Jewish and Israeli scholars first began systematically to bring down to size unnecessary distortions and wartime rumors about the fate of Jews in this tragic era. It is difficult to claim that Prof. Yehuda Bauer of Hebrew University, or Dr. Shmul

Krakowski of the Yad Vashem Holocaust studies center or professors Arno Meyer of Princeton University and Howard Stein of the University of Oklahoma are neo-Nazis or bigots.

They wrote in The Jerusalem Post (May 1990), Washington Times (July 1990) and Journal of Psychohistory (fall 1978) that the Nazis never made soap from human fat and the number of gassed victims at Auschwitz should be lowered by three million.

In 1985, Leo Ettinger and Robert Krell, both Jewish and professors at the University of British Columbia, compiled a bibliography of about 1,600 medical articles, "Psychological and Physical Effects of Concentration Camps," a post-acute stress disorder, popularized by Patrick Buchanan as Holocaust survivor

syndrome. Finally, last October, the Auschwitz victim count was officially reduced to 800,000 in a book about to be issued by the Holocaust Memorial Museum in Washington.

The word "holocaust" was not capitalized in its earliest uses in reference to World War II, even in Jewish sources. Indeed, while mainstream publications reported, for instance, that two million Jews had been "exterminated in Treblinka death house" with "heat and steam" (New York Times, Aug. 8, 1943), they did not use the word "holocaust."

The word "holocaust" in World War II was first used by the Soviet Jewish Anti-Fascist Committee on Christmas Eve 1942, when the fall of Stalingrad appeared imminent and the first (and last) bombs were dropped on Tel Aviv. The word

"holocaust" was used, with a description of this event, in the Dec. 24, 1942, daily bulletin of the Jewish Telegraphic Agency from Moscow.

The only known complete copy of the daily bulletin was discovered on the shelves of the New York Public Library recently. About 12,000 pages of this invaluable data, printed on cheap, wartime, acid paper, have crumbled away in untouched bundles, tied up 50 years ago with cord that is yellowing and falling apart. They are still not microfilmed because of a shortage of funds. Only debate of the Holocaust might provide more funds and thus preserve and bring to light important details.

Likewise, millions of the less important pages of Nazi documents, also on acid paper, and still not read or even

microfilmed, slowly disintegrate in vaults at the National Archives and elsewhere. These Nazi materials might still contain the intensely sought-for wartime Nazi document explicitly ordering the final solution or describing the homicidal gasings.

Irene Zdziarski

Stamford, Conn., Dec. 23, 1993

The writer is chairwoman, Holocaust Committee, Polish Historical Society.

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

No. 93-1713

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Supreme Court, U.S.
FILED
MAY 27 1994
OFFICE OF THE CLERK

In The Supreme Court of the United States

October Term 1993

DAVID WAYFIELD,

Petitioner,

v.

TOWN OF TISBURY, MARJORIE CONVERY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

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ERRATA AND AMENDMENT TO THE PETITION

DAVID WAYFIELD, *pro se*
176 A Main Street
P.O. Box 699
Vineyard Haven, MA 02568
Tel. (508) 693-4609

No. 93-1713

In The
Supreme Court of the United States
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DAVID WAYFIELD,

Petitioner,

v.

TOWN OF TISBURY, MARJORIE CONVERY,

Respondents.

Errata And Amendment To The Petition For A Writ Of Certiorari

DAVID WAYFIELD, *pro se*

ERRATA AND AMENDMENT TO THE PETITON No. 93-1713

This supplemental brief, actually an errata, is submitted because in the original Petition there were errors on page #14, which significantly distorted the facts of the case. The following page, designated as "14(a)," replaces the original defective page 14.

The original page #14 portrays the Petitioner as an alleged assailant, while in fact, as evidenced by the Police Report, one of the Respondents, Vineyard Haven Public Library (VHPL) director Marjorie Convery, an agile, middle-aged women, forcibly attempted to body search and then to detain this 67 year old, post-myocardial-infarction Petitioner.

Conversely, the Respondents never accused the Petitioner of any assault, a fact also transparent from the decisions of courts below (included in the Appendix of the original Petition) and Defendant's Motion to Dismiss affirmed by the US District Court in Boston. Actually, due to his pacifist beliefs, the Petitioner never resorted to physical force even in self-defense.

The Appendix consisting of a police report is included, because even in self-serving statements of Ms. Convery, it reveals absence of hints by her of any aggressive behavior on the part of the Petitioner (B 2-3).

On December 15, 1990 the petitioner approached Ms. Convery, the director of the VHPL with a suggestion (which was refused) to establish a balance to a library's collection in regard to the WWII history and the Holocaust and by purchasing or accepting as a gift, scholarly revisionist materials.

Within one hour, the petitioner was accused by the library director of stealing one of the two menorahs on display at the library for celebration of the Hanukah season. Simultaneously, Convery attempted to search petitioner's belongings, and when rebuked, she assaulted him while the petitioner attempted unobtrusively to leave the library.

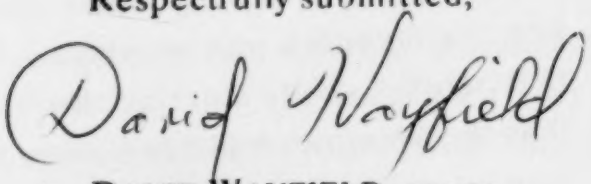
The police report explains that the director "asked Wayfield if she could look into his canvas tote bag" (B - 1), and when refused, she said, she "attempted to stop him" from leaving the library, (B-2). Three days later, Ms. Convery reported to the police that "she did not bel[ie]ve the [m]enorah was removed from the library, just put behind the door," (B- 5).

The Court of Appeals First Circuit wrote, and the respondent VHPL did not object, that "it is possible to infer that the accusation of stealing was a pretext and that the real reason for the 'assault' and the Director's letter banning Wayfield [from the library], was

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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B -1

TISBURY POLICE DEPARTMENT

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On 12-15-90 at about 15.00 hrs, I received a call from the Comm. Center to go to the Vineyard Haven Library concerning a theft. When I arrived I was met by library Director, Marjorie Convery. Convery told me a man known to her as David Wayfield had been doing research in the children room of the Library where a menorah was on display. Convery told me that her Assistant Librarian, Karen Achille, told her that the Menorah had been moved from the display case to another location in the children's reading room and that David Wayfield is the only person using the children's reading room. When Achille returned downstairs to the children's reading room, the Menorah was missing. Achille reported the missing Menorah to Convery immediately and returned to the children's reading room and confronted Wayfield. Convery asked Wayfield if he had the Menorah and Wayfield responded "no comment." Convery repeatedly asked Wayfield to return the Menorah. Wayfield told Convery that she would have to discuss it in court. Convery asked Wayfield if she could look into his canvas tote bag that he had on the table and Wayfield told her no.

Convery told me that Wayfield wanted her to sit down and have a discussion about Zionist plots. Convery told Wayfield that she would sit down after he returned the Menorah. Convery told me that Wayfield then became angry and left the Library with the canvas bag which Convery believed contained the Menorah because the bag appeared as if it had a heavy object in it, not papers or books. Convery followed Wayfield and attempted to stop him and told him that she will be calling the police. Wayfield responded that would be fine and he will discuss it in court. Convery told me that no more than 5 minutes had passed from the time Wayfield was reported in the children's room with the Menorah and when the Menorah was reported moved, then missing. I asked Convery to give me a description of Wayfield. Convery told me that he is an elderly white male about 60 years old, 5'10", white hair, wears glasses, dressed in a brown jacket and had white pants.

Convery described the Menorah as about 15"h x 15"l, made of metal with six candles. I also asked Convery and Achille to write a statement of events leading up to the alleged theft. (See attached statements dated 12-15-90.) Convery also provided me with Wayfield's address and phone number.

At about 1520 hrs., I left the library and drove to Wayfield's residence off Main St. I knocked on

Wayfield's door and got no answer. I spoke to 2 neighbors, Mary Jacobs and a Mrs. Mayhew, I asked them to call the police if they see Wayfield come home.

I left Wayfield's house and returned to the library to pick-up Convery's and Achille's statements. As I was walking to my cruiser which was parked in front of the library on Main St., I saw a man walking north on Main St. matching the description given to me of David Wayfield. I approached the man who was wearing a brown suede jacket, and white pants. The man was carrying an open umbrella to shield himself from the rain. The man was also carrying a canvas tote bag folded up under his right arm. I identified myself to him and asked him his name. The man first paused and said nothing. I asked him if he was David Wayfield. The man told me yes he was. I read Mr. Wayfield his constitutional rights per Miranda while he held his umbrella over me to shield me from the rain, I asked Wayfield if he had taken the Menorah from the library. Wayfield told me that that has to be discussed in a court of law. I asked Wayfield to return Menorah to me. Wayfield asked me if he was under arrest. I told Wayfield no. I asked Wayfield if he would mind sitting in the cruiser which was parked in front of the library so we could get out of the rain and discuss the matter. Wayfield asked me if he was under arrest. I told him no, I just want to

get out of the rain. Wayfield sat in the cruiser with me. I asked Wayfield if he had taken the Menorah from the library. Wayfield got angry and told me that the library has no Nativity scene and had no business displaying a zionist symbol. Wayfield again asked me if he was under arrest, I told him, at this time, he was not. Wayfield got out of the car and ran north on Main St. I followed him to his house, and at this time, I asked the OIC of the 4-12 shift to meet me on Main St. Ofcs. Stobie, Burt and Smith came to my location and I filled them in on the alleged theft.

At about 1610 hrs., I spoke to COnvery and was told the Menorah is the property of Library Trustee Kathleen Sawyer.

On 12-16-90 I spoke to Robert Sawyer who told me that the Menorah is valued at $100.00.

12-18-90 (15) At 1253 hrs., Mrsjorie Covnery into the police station with a letter that she thought may have to be delivered to David Wayfield. Ms. Covnery is the library director at the Vineyard Haven library. Ms. Covnery said she mailed two copies of the letter to Mr. Wayfield. One copy was sent certified mail and the other was sent parcel post. Ms. Convery said the Menorah was found in the children's room at the library. It was between a cassette book and a wall behind the door. The Menorah was found this morning at approx. 1100 hrs. by Corrine Ebbs and Patricia Blakesley, employees

at the library. Ms. Convery said the Menorah was not damaged and she did not beleive the Menorah was removed from the library, just put behind the door. [Holographic initials of:] "F.W."

On 12-19-90 at the 5PM meeting of the Library Trustees, a vote was taken to revoke Mr. Wayfield's library priveledges until April 2, 1991. A letter was sent to him certified return receipt requested notifying him of this. See copy of letter of notice to Mr. Wayfield dated 12-20-90. [Holographic initials of:] "J.M.C."

On 1-12-91 At about 1445hrs., I spoke to Marjorie Convery at the library, I asked Convery to tell me the events leading up to the find of the Menorah. Convery told me it would be easier for her to type out a statement. (See attached statement dated 1-11-91).

Reporting officers: Gately; Recording officer: Gately; Typed by: kls; Date and Time 1-14-91

Note: The above transcription includes typographical and grammatical errors of the original.

Supreme Court, U.S.
FILED
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(2)

No. 93-1713

In the Supreme Court of the United States

OCTOBER TERM, 1993

DAVID WAYFIELD,
PETITIONER,

v.

TOWN OF TISBURY AND MARJORIE CONVERY,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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1 pp

QUESTIONS PRESENTED

The respondents the Town of Tisbury and Marjorie Convery object to the Questions Presented in the petition, and do not believe that there are any questions to be addressed by this Court. The respondents' specific objections to the Questions Presented are detailed in the Reasons for Denying the Writ.

The respondents the Town of Tisbury and Marjorie Convery respectfully request that this Court deny the petition for writ of certiorari seeking review of the First Circuit's opinion in this case.

STATEMENT OF THE CASE

The respondents object to the Statement of the Case in the petition, and incorporate by reference the facts of the case as presented in the opinion of the United States Court of Appeals for the First Circuit, appended to the petition at A-3, and the opinion of the United States District Court for the District of Massachusetts, appended to the petition at A-16. In particular, the respondents contend that the petitioner's Statement of the Case is not a concise statement containing the facts material to the consideration of the questions presented, as required by Supreme Court Rule 14.1(g).

The respondents also object to the petitioner's characterization of the issues before this Court and the rambling and irrelevant recitation of the "background" of the case. The respondents likewise object to the amended statement of the facts as set forth in the Errata and Amendment to the Petition.

REASONS FOR DENYING THE WRIT

The petition should be denied because there are no special or important reasons for granting the petition, as defined in Supreme Court Rule 10. The decision of the First Circuit Court of Appeals, of which the petitioner seeks review, is not in conflict with any other United States Court of Appeals or with any state court of last resort, nor has any such conflict been alleged.

The First Circuit Court of Appeals also did not depart so far from the accepted and

usual course of judicial proceedings as to call for this Court to exercise its power of supervision. The First Circuit applied the correct standard for deciding a motion to dismiss under Fed. R. Civ. P. 12(b)(6), accepting the factual allegations in the complaint as true and construing the facts in the light most favorable to the plaintiff/petitioner. Having done so, the First Circuit determined that the complaint failed to show any facts which could entitle the plaintiff/petitioner to relief on all but one of his claims.

The First Circuit did reinstate the cause of action arising out of the petitioner's three-month suspension from the Vineyard Haven Public Library, finding that it was possible to infer from a liberal reading of the "conclusory allegations" and "circumstantial" facts that the petitioner

had been barred because of his political views.[1] The petitioner has now introduced new facts and allegations in his second Question Presented in an apparent attempt to recast the claim arising out of the library suspension as an "important question of federal law." The District Court and the First Circuit were not asked to address the issue stated in the second Question Presented, and therefore this Court should not do so.

Furthermore, neither Question Presented raises any important question of federal law that should be settled by this Court. The decisions of the District Court and the First Circuit were correct, turned upon the

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[1] While the respondents contend that the complaint did not allege sufficient facts to entitle the plaintiff to relief on the claim arising out of the library suspension, they accept the decision of the First Circuit as correct for the purposes of this Brief in Opposition.

particular facts as alleged in the complaint, and contrary to the petitioner's characterizations, will affect only the parties to this litigation.

Finally, the petition should be denied because the petitioner has failed to present with accuracy, brevity and clearness that which is essential to a ready and adequate understanding of the points requiring consideration.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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MOTION FILED
JUN 6 1994

No. 93-1713

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Petitioner,

v.

TOWN OF TISBURY, MARJORIE CONVERY,

Respondents.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The First Circuit

Motion For Permission to File Brief Amicus Curiae in Support of Petitioner

and

Amicus Curiae Brief Of The Polish Historical Society

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June 6, 1994

35 pp

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On Petition for Writ Of Certiorari To The
United States Court Of Appeals
For The First Circuit

**Motion For Permission To File Brief
Amicus Curiae in Support of Petitioner**

The Polish Historical Society (PHS) respectfully moves this Court for permission to file the accompanying *Amicus Curiae* brief in support of Petitioner. Consent was granted by the Petitioner for filing of a brief by the PHS and was filed with this Court's Clerk. Leave from this Court is requested under Rule 37 of this Court.

PHS is an educational organization committed to the promotion of free access to restricted archival materials pertaining to the history of the First and Second World Wars. The membership of the PHS includes scholars, individuals, U.S. citizens and lawful residents joined by a common interest in history.

The interest of *Amicus* is set forth below. The accompanying brief addresses issues of fact concerning the public at large, the Petitioner and Respondents. It describes both overt and surreptitious censorship, each of which constitute an abridgment of civil rights, not only by Respondents, the Vineyard Haven Public Library, but also by other public libraries as representatives of state and municipal authorities nationwide.

Amicus believes that its brief will supplement rather than reiterate the arguments made by the parties. Due to the national implications of the issues submitted by the Petitioner, PHS respectfully moves this Court for permission to file the *Amicus Curiae* Brief submitted herewith. Respondents oppose the filing of this brief.

Respectfully submitted,

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No. 93-1713

In The
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October Term 1993

DAVID WAYFIELD,

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TOWN OF TISBURY, MARJORIE CONVERY,

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On Petition for A Writ Of Certiorari To The
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For The First Circuit

Amicus Curiae Brief Of The Polish Historical Society in Support of the Petitioner

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June 6, 1994

TABLE OF CONTENTS

I. Interest of Amicus.....1

II. Purpose of Amicus.....5

III. Summary of Argument.....7

IV. Argument:

1. Public Libraries Ostensibly Observe the First Amendment.....8

2. How Libraries Fight Outside Censorship.....10

3. Forms of Censorship Practiced by Librarians and Libraries.....12

4. Library Holdings on African-American Revisionist Subjects.....15

5. Library Holdings on Holocaust Revisionist Subjects.....20

6. "Books Won't Stay Banned. Ideas Won't Go to Jail. In the Long Run of History, the Censor and the Inquisitor Have Always Lost." 26

V. Conclusion.....29

VI. Certificate of Service.....30

I. INTEREST OF THE *AMICUS CURIAE*:

The Polish Historical Society (PHS) was established in 1988 as an educational organization committed to the promotion of free access to restricted archival materials pertaining to the history of the First and Second World Wars. PHS specializes in retrieval, collection, and release of archival documentation, which until recently was reposited in archives with restricted access.

The membership of the PHS includes scholars, individuals, citizens and lawful residents of the United States, joined by common interests in the history of both World Wars, including the history of the Jews who prior to 1939 constituted one third of the population of Poland.

Amicus also holds itself to be an expert at evaluating the completeness and balance of library collections on the subject of both World Wars. Struck by a profound imbalance on this matter at many major libraries, and then at the Vineyard Haven Public Library, the PHS decided to file the instant brief.

Amicus is committed in principle and practice to the freedoms afforded and protected by the First Amendment and recognizes that scholarly progress cannot proceed without free inquiry. *Amicus* supports affirmative enforcement of the American Library Association's (ALA) Library Bill of Rights which states that:

"Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval."

In the Middle Ages, science and humanities were static and stifled by restriction of speech and thought. This era is consequently now remembered with disapprobation. The Renaissance occurred after freedom of speech and inquiry was won following centuries of effort and through the tenacity of a few.

Calls for suppression of debate and of historical revisionism appear as a return to the principles of the Dark Ages which claimed that an observable straight horizon is undebatable proof of the flatness of the earth. Justice Louis Brandeis provided an answer for those who are concerned about propriety of historical revisionism: "[t]o expose ... fallacies... the remedy... is more speech, not enforced silence."

Accurate knowledge of history is essential for the future well-being of all. George Santayana wrote that those who disregard the past are bound to repeat it. George Orwell wrote that "Who controls the past controls the future."

Revisionism must be an integral part of the historical analysis of both World Wars because major participants also fought with words. The historical record must be set straight on some fictitious wartime propaganda, especially Soviet press reports, which were then accepted as factual in the West.

This revisionist process has already been started. For instance, in recent years it was finally publicized world wide that 4,500 Polish officers had been murdered at Katyn by the Soviet NKVD in 1940. Yet within the past decade, a Soviet documentary shown on American television screens was still blaming the Nazis for this massacre, with backup from supposed local "eyewitnesses" in a wartime propaganda film clip.

As professionals, *Amicus* learned that historical studies have to concentrate on interpretation of objective physical facts in preference to that of subjective (or distorted or even extorted) eyewitness testimony. By uncovering physical archival evidence, i.e. wartime aerial photography of Katyn, it has been shown that the claims of Germans and the Soviets based on eyewitness testimony were inaccurate regarding the Katyn massacre. The German experts claimed that the Soviets killed 10,000 Polish POW officers, while the Soviet eyewitnesses testified that these Poles were massacred by the Germans. While the Military International Tribunal at Nuremberg ascribed the guilt to the Nazis, examination of the wartime aerial photographs revealed that the mass graves could not contain more than 4,500 individuals and had been filled with these victims of the NKVD prior to the German invasion.

By analyzing until recently unavailable physical documentation in regard to the Nazi concentration camps (data from wartime aerial photography, post-war archeological explorations, forensic toxicology in regard to Zyklon B and diesel exhaust, and chemical technology of the fabrication of soap), it was realized that many of the World War II

Holocaust claims, especially Soviet, were exaggerated, as has been acknowledged by Jewish colleagues. Furthermore, in the process of its studies, *Amicus* uncovered a similarity between the patterns of martyrology of the First and the Second World Wars, which provides a new insight into this matter.

Amicus's convictions about the WW II Holocaust have been articulated in a document entitled "Holocaust Is Undeniable But Should Be Debated," reprinted almost in its entirety on January 1, 1994 by the editors of The New York Times under the headline: "Don't Cut Off All Debate About the Holocaust". *Amicus* opposes most of the arguments offered by those who have been described as "Holocaust deniers". However, *Amicus* agrees with some scholarly tenets of some Holocaust revisionists, which are also accepted by widely recognized Jewish historians.

II. PURPOSE OF *AMICUS* BRIEF:

The gravamen of the Petitioner's complaint is the discriminatory treatment he received from Respondents, the Tisbury Senior Center and the local Vineyard Haven Public Library (VHPL), both public community forums.

Because the rules of this Court require brevity, Wayfield's Petition asserts, but does not document in depth, an intense censorship, practiced by the respondent VHPL in contravention of its own regulations. Neither did the Petitioner discuss a similar censorship practiced by library authorities whose guidance the VHPL follows:

- Cape Library Automative Material Sharing (CLAMS), an organized regional consortium of public libraries;
- Library of Congress, the national leader in the area of labeling and acquisitions;
- Online Computer Library Center (OCLC), the world leader in cataloguing. The OCLC provides for librarians, via phone lines and computer terminals, "state of the art," instant information about holdings in about 15,000 American and 3,000 larger foreign libraries. The existence of the OCLC is not publicized for the reading public so that its extensive and expensive on-line services will not be over-used by non-professionals.

The purpose of *Amicus* is to call to the Court's attention the fact that there exists nationwide abridgment of First Amendment rights. To fill the Petition's factual gaps, *Amicus* will:

- render a scholarly evaluation of censorship practices;
- provide the Court with an analysis of the holdings on controversial subjects at Respondent library, the VHPL;
- compare said holdings with holdings in other libraries; and
- expound on the evidence and etiology of censorship.

Finally, after the presentation of the "technical data" on the following pages, *Amicus* respectfully suggests to this Court that:

- the most likely reason for the nationwide abridgment of the First Amendment rights by the libraries nationwide is frequently not malicious but is a product of the funding system of the libraries, and
- that said wrongs might be permanently ameliorated by this Court's decision which by affirming First Amendment principles could prompt libraries to restructure funding in a such a way as to make them at least partially financially and politically independent.

III. SUMMARY OF ARGUMENT:

1. It appears that the near total absence in public libraries of World War II and African-American historical revisionist books and materials represents, under color of law, discrimination and abridgment of freedom to speak and read. Research reveals that such an abridgment of the rights of the First Amendment is encountered not only at Respondent Martha's Vineyard library but is practised nationwide.

Amicus believes that the intense, unconstitutional censorship perpetrated by these libraries is inadvertent. This self-imposed censorhip evolved over the last five decades as a result of lack of tenured governmental funding and overdependence of public libraries upon private contributors. Thus, public libraries were forced to follow politically fashionable trends. As a resùlt, their adherence to non-discriminatory and divergent view concepts was greatly diminished.

2. *Amicus* argues that the singular victory of the press (Village Voice and Chicago Sun-Times) and public opinion in overcoming initially successful censorship by private organizations (such as The B'nai B'rith) and public institutions (such as the American Library Association) of an employee of the Chicago Public Library, who had prepared a comprehensive bibliography of the Palestinian/Israeli conflict, should not be considered as a sufficient safeguard of First Amendment rights elsewhere, and thus requires affirmative involvement of this Court in this and other such cases.

IV. ARGUMENT

1. PUBLIC LIBRARIES OSTENSIBLY OBSERVE THE FIRST AMENDMENT:

In order to avoid abridgment of the First Amendment, virtually all public libraries in the United States subscribe to the American Library Association's Library Bill of Rights which stipulates that:

> "2. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval."

Acquisitions are usually at the leading edge of controversies in all libraries. Most small libraries do not have a formal, written selection policy for acquisitions, although this is recommended by the ALA. More than likely, their overburdened staff does not have time to prepare such in a written format, and this suffices as long as from the small numbers of library users no one objects to this deficiency. Nevertheless, virtually all public libraries accept and practice the precepts set forth in the *Materials Selection Policy Summary* of the Santa Monica Public Library, which calls for diversity and for satisfying the needs of various groups within the community:

> "1. The basic test for selection of any item is whether it is of permanent, current, or potential value to the community. Other criteria include the quality, cost, format, published reviews, public demand, and availability of the material.
> 2. Materials are selected to satisfy the prevalent needs and interests of the majority of the community as well as diverse groups within the community

> 3. The Library attempts to present differing viewpoints on contemporary issues, some of which are controversial. Selected materials, therefore, may be meaningful and significant to some individuals, while offensive, shocking, or boring to others. Materials are selected for their overall contribution to collection."

Predicated on limits of budget, shelf space, and degree of community interest, every library is compelled to select and reject printed and audio-visual materials. Such selection and rejection is necessary and constitutional and does not abridge the spirit of the First Amendment as long as the selection is not discriminatory.

Most libraries do indeed apply the above freedom to read and speak guidelines as long as the censorial pressure comes in the area of politically popular topics. However, intense and nationwide departures are found in the form of internal censorship in the area of politically unfashionable or unpopular statements, especially if such controversy may affect library funding. Such internal censorship in this area is found nationwide:

- in small libraries such as the Respondent VHPL in Tisbury, Massachusetts,
- in medium and major libraries and/or library systems in towns (such as Darien, Connecticut), and cities (such as Stamford, Connecticut, Cincinnati, Ohio, and New York, New York),
- in regional and statewide library systems such as CLAMS in Massachusetts, REQUEST in Connecticut, OhioLINK in Ohio, and
- even in the two largest American libraries, the Library of Congress and the New York Public Library.

2. HOW LIBRARIES FIGHT OUTSIDE CENSORSHIP:

The egalitarian policy of libraries is buttresssed against any of the outside-of-the-library pressures for favoritism and accusations of censorship. The safeguarding organizations were established by and are located at the Chicago headquarters of the American Library Association [ALA], the oldest and largest in the world organization of librarians:

1. The Freedom to Read Foundation [FRF] was established in 1969, essentially to provide legal aid for librarians and libraries accused by the public and/or government of liberalism in acquisition policies. FRF has previously filed with this Court various *amici* briefs opposing outside restrictions on acquisition policies of libraries.

2. The Office of Intellectual Freedom [OIF] was established in 1967 as a watchdog against censorship directed at libraries. Through its monthly *"Newsletter on Intellectual Freedom,"* it informs libraries about outside censorial pressures and ongoing legislative battles at various local courts. One of its permanent columns is devoted to reporting on the decisions of this Court. The last page of this newsletter, entitled "Intellectual Freedom Bibliography," provides the libraries with a digest of American daily press and periodicals on the subject. In addition, the OIF prepared and periodically updates the Intellectual Freedom Manual, available at nearly every public library.

3. The Intellectual Freedom Committee [IFC] was established in 1940 as an advisory unit constantly reviewing and updating the policies which protect, enforce, and address the rights of the First Amendment.

ALA , FRF, OIF and IFC are the authors and sponsors of remarkable documents. The ALA's Library Bill of Rights, the *Magna Carta* for librarians and readers everywhere, protects freedom of speech and diversity of library collections. The FRF's Freedom to Read Statement pledges:

> "To foster libraries as institutions fulfilling the promise of the First Amendment for every citizen; to support the right of libraries to include in their collections and make available to the public any work that they may legally acquire; and to set legal precedent for the Freedom to Read of all citizens."

and thoroughly condemns surreptitious censorship.

Thus, during the past decades, armed with the above tools, libraries skillfully and forcefully resisted **outside** censorial pressures in order to protect themselves from potential litigation based on First Amendment contravention, especially if it involves lesbianism, homosexuality and pornography. As demonstrated on the following pages, however, libraries fail to do so when subjects are politically unpopular and might, on balance, impact adversely upon their funding. The libraries' rules and bills of rights do not have built-in safeguards, other than this Court, to prevent outside and internal censorship.

3. FORMS OF CENSORSHIP PRACTICED BY LIBRARIANS AND LIBRARIES:

Libraries and librarians have numerous methods of applying overt and surreptitious censorship and selection policies. All variants of censorship below were encountered in regard to the subjects under consideration in this brief.

Exclusionary acquisition policy:
The most common form of censorship practiced by public libraries is an exclusionary acquisition policy. Printed and audiovisual materials, which are disliked by the librarians or perceived as unpleasant to potential donors, are simply not bought.
In not purchasing such materials, libraries may follow various practices:

- When a reader requests that such a purchase be made, most often the library does not respond. Procrastination will usually destroy the interest of the reader.
- If a reader pursues the request, the library may answer that:
  - -- it lacks sufficient funds for the purchase.
  - -- the item has not been reviewed in The Library Journal, a publication which is controlled by the ALA, or any other journal. For such purchasing purpose, a review from a revisionist journal is not acceptable because librarians may consider such specialty reviews not to be authoritative.
  - -- the item is published by a small publishing house rather than by a well-known publisher.
  - -- the library's acquisition board makes purchasing decisions.

-- there is no interest in the community about revisionist materials. In replying thus, libraries appear unaware of growing interest in Holocaust revisionism, as exemplified by:

-- the fact that the editor of Martyrdom and Survival, the flagship publication of Holocaust survivors and of the Yad Vashem Memorial in Jerusalem, proclaimed that we live in "the era of Holocaust Revisionism."

-- the fact that at least four anti-revisionist books have been published in the last two years.

-- the fact that about 60% of the about 408 articles published about the Holocaust in five leading newspapers in the United States during the past three years refer to Holocaust revisionism.

-- the fact that 9-22 % of adult Americans have doubts about the Holocaust according to recent public opinion polls.

Another way for libraries to exclude controversial material is by not accepting donations. Even if accepted, a controversial donation may subsequently be weeded out as part of the library's customary policy of discarding books for reasons such as making room for new acquisitions or because of a book's seemingly worn condition.

Covert censorship:

Covert censorship might be exemplified by sloppy, "erroneous" or pejorative labeling in catalogs of controversial materials and books. According to

the ALA's Statement on Labeling as an interpretation of the Library Bill of Rights:

"Labeling is the practice of describing or designing certain library materials by affixing a prejudicial label to them or segregating them by a prejudicial system. The Americal Library Association opposes this as a means of predisposing people's attitudes towards library materials for the following reasons:

1. Labeling is an attempt to prejudice attitudes and as such, is a censor's tool.

2. Some find it easy and even proper, according to their ethics, to establish criteria for judging publications as objectionable. However, injustice and ignorance rather than justice and enlightenment result from such practices, and the American Library Association opposes the establishment of such criteria.

3. Libraries do not advocate the ideas found in their collections. The presence of books and other resources in a library does not indicate does not indicate encoursement of their contents by the library.

The American Library Association opposes efforts which aim at closing any path to knowledge."

4. LIBRARY HOLDINGS ON AFRICAN-AMERICAN REVISIONIST SUBJECTS:

An authority on the subject of African-American studies, albeit surrounded by controversy, is City College of New York Professor Leonard Jeffries. Within the past year, he was reinstated as the Chairman of the department from which he had been dismissed after 20 years of service. The dismissal followed his public speech four years ago in Albany, N.Y. in which he expressed unpopular views stemming from his research on the ethnic background of slave traders in England and America. Jeffries won a highly publicized March 1994 trial in New York City. In addition to reinstatement, he was awarded $400,000 in damages due to improper dismissal.

Amicus obtained from Professor Jeffries a list of the seven foremost books on the subject of African-American historical revisionism. These books, rightly or wrongly, claim over-representation of persons of the Jewish faith in the slave trade and describe flourishing civilizations in pre-colonial Africa. Their titles are as follows:

1. "Message to the Blackman in America", by Elijah Muhammed, United Brothers, pub.
2. "Stolen Legacy", by George G. James, African Islam Mission Pubs., 1954.
3. "Stolen Legacy: The Greeks Were Not the Authors of Greek Philosophy but the People of North Africa Commonly Called the Egyptians", by George G. James, Richardson Pub., 1988.
4. "Iceman Inheritance: Prehistoric Sources of Western Man's Racism, Sexism and Aggression" , by Michael Bradley, Kayode Pub., 1991.

5. "Civilization or Barbarism: An Authentic Anthropology" .by Cheikh A. Diop, L. Hill Books, 1991.
6. "African Origin of Civilization: Myth or Reality". by Cheikh A. Diop, L. Hill Books, 1974.
7. "Africa: Mother of Western Civilization", by Yosef Ben-Jochannan, Black Classic , pub., 1988.

Oak Bluffs, a little town in Martha's Vineyard, has a small, year-round community of African-American intellectuals dating back almost 150 years. In summer, it swells with vacationing African-Americans which account for 30% of the summertime Oak Bluffs population.

According to projections of the U.S. Population Census, Oak Bluffs in 1990 consisted of 2,517 white and 193 black year-round residents. In 1990, Vineyard Haven consisted of 3,120 year-round inhabitants of which 85 (or 2.9 %) were African-American. Because of the three-mile proximity of Vineyard Haven and Oak Bluffs, both are served by the Respondent VHPL.

A search through CLAMS, a computerized catalog of 23 libraries at Martha's Vineyard and the Cape Cod region, which includes the Respondent VHPL, revealed that **none** of the African-American revisionist books dealing primarily with the history of American slavery were available at these libraries.

Conversely, a search through CLAMS for the book entitled *Uncle Tom's Cabin* revealed two copies in the entire Cape Cod/Martha's Vineyard system. Seven libraries in the CLAMS system contain eleven copies of *Anne Frank, the Diary of a Young Girl*, with the Respondent VHPL containing two copies of this book.

Darien is an old Connecticut coastal town, one of the wealthiest in the United States. According to the projections of the 1990 U.S. Census, the population of Darien in 1993 consisted of about 18,000 inhabitants, 96.5% Caucasians and 0.5% Blacks. Until about two decades ago, Darien was a homogenous community of White Anglo-Saxon Protestants, who were legally and successfully resisting the influx of Catholics, Jews, Blacks and immigrants. Today, there is a small but steadily growing number of Jewish-Americans in Darien, but very few African-Americans have thus far moved into this community.

According to Connecticut State Library records, the Darien Library "is the busiest public library in Connecticut on a per capita basis." A catalog search through "Request" revealed that none of the above-mentioned African-American revisionist books are available at this or any other Connecticut library.

The Darien Library contains two copies of *Uncle Tom's Cabin*. Despite obvious under-representation by Jewish-Americans in this locality, there are 24 (twenty-four) copies of the Anne Frank diary at the Darien Library.

In Professor Jeffries' home city, the reference librarians at the New York Public Library, the second largest in the nation, were able to provide instantly on request the transcript of his "offending" speech delivered in 1990. They were unable, however, to retrieve from any of the library catalogs available to them (their own or worldwide [OCLC]), the title of any of the above-listed African-American

revisionist books submitted by Professor Jeffries. This example is perhaps the best illustration of institutionalized suppression and "silent" censorship.

- The absence of African-American revisionist books at the Respondent library is discriminatory and contradicts the library's written policy claiming adherence to and encouragement of diversity of subjects and viewpoints. If the ethnic population of the community were to have any proper bearing on the representation of ethnic books in that community's library, this transgression might be slightly mitigated by the small number of year-round African-American residents, despite a larger number of summer visitors of that ethnic background.

- The absence of African-American revisionist books in 157 Connecticut libraries represents, under color of law, discrimination, censorship and abridgment of freedom to speak and read. It contradicts the libraries' own written policy regarding diversity of subjects and viewpoints, prescribed in the Intellectual Freedom Handbook published by the Connecticut Library Association.

- The abridgment of the First Amendment is encountered not only at the Respondent library but also nationwide as exemplified above, and deprives millions of citizens of their right to read and know divergent views.

- It appears that the internal censorship perpetrated by public libraries evolved spontaneously through pervasive permeation of our society with the most popular views because the guiding national institutions, such as the Library of Congress, and organizations, such as the American Library Association, have not taken appropriate action to oppose such censorship.

5. LIBRARY HOLDINGS ON HOLOCAUST REVISIONIST SUBJECTS:

Examination by *Amicus* of Vineyard Haven Public Library:

In April, 1994, the Respondent Library (VHPL), with a total of about 50,000 volumes in its stacks, was visited by an *Amicus* representative. The purpose of the visit was to examine its holdings for the presence or absence of any Holocaust revisionist materials. This visit confirmed that Petitioner's multiple requests over a number of years that VPHL purchase such materials or accept them as donations proved unsuccessful.

At first, a reference librarian was requested to help. She appeared eager and very familiar with the term "Holocaust." The library catalog's subject heading "Holocaust, Jewish" revealed the presence of 23 books. She seemed vaguely familiar with the term "revisionism". Her enthusiasm faltered into disappointment and exasperation when she realized that she was unable to help. She exhausted all possibilities of her library's own computerized catalog and those of the Computerized Library Automative Material Sharing (CLAMS), a computerized database system which encompasses 23 regional libraries. She suggested that on some other day, the Boston Public Library might be of help. This librarian did not know that Holocaust revisionist materials might be found only under the subject subheading "Holocaust, Jewish (1939-1945), errors, inventions, etc."

Then, the *Amicus* representative personally checked the VHPL catalog and shelves as well as the CLAMS database without any librarian's assistance. It was found that VHPL uses the Library of Congress subject headings and the Dewey Decimal cataloging system. In these systems of classification, "Holocaust, Jewish (1939-1945)" is subdivided into 314 subheadings. Some of the subheadings are very detailed, as, for example, in "Holocaust, Jewish (1939-1945), narratives, Wlodawka". In Poland, there are several hamlets and villages named Wlodawka: none of them contain more than 75 families. A subheading "Holocaust, Jewish (1939-1945), revisionism" or the subject "Revisionism" does not exist.

Next, the VHPL catalogs were checked for the presence or absence of two foremost Holocaust revisionist titles and books:

> -*The Hoax of the Twentieth Century* by Northwestern University Professor Arthur R. Butz, Noontide Press, 1976;
> -*Air Photo Evidence, Auschwitz, Treblinka...* by John C. Ball, Ball Resource Services, 1992. This is an album of high resolution wartime aerial photographs of Nazi concentration camps and Katyn.

Neither of these books could be found on the VHPL shelves or in the VHPL and CLAMS catalogs. This exhausted the potential resources in this regard of the Respondent library and its regional database.

At this point, an average Martha's Vineyard reader would have dropped his or her search for revisionism or Holocaust revisionism, considering this to be a marginal fad, not worthy of attention because of lack of documentation.

Examination by *Amicus* of Holocaust Revisionist Holdings in Libraries of Medium-Sized Cities:

The next phase of examining the availability of revisionist materials was accomplished in Stamford, Connecticut, a medium-sized city in the New York metropolitan area. Its Ferguson Library contains 500,000 volumes on its shelves, and uses the Library of Congress subject heading classification. Its Connecticut-wide computerized catalog is called "Request" and encompasses 157 libraries.

At different times, two reference librarians at the Ferguson Library were asked in 1994 for help in locating any Holocaust revisionist materials. These librarians checked the library's computerized catalog through subject heading and word searches, which yielded no results. They then said that they could proceed no further unless the requestor knew the name of some revisionist book.

At this point, an average reader would likely have abandoned the search.

However, *Amicus* discovered that under the subject heading "Holocaust, Jewish (1939-1945), errors, inventions, etc.", the "Request" computerized catalog lists 12 books, of which 6 are revisionist and 6 are anti-revisionist.

Examination by *Amicus* of Holocaust Revisionist Holdings in a Large City Library:

Cincinnati, Ohio is a large industrial city with large universities. The Cincinnati Public Library contains about 5,000,000 volumes. It is conjoined with other

libraries in the state within OhioLINK, a computerized catalog network. University libraries in Ohio are conjoined within UCLID, an academic computerized catalog network listing scholarly books and materials. Both of these computerized catalog systems use the Library of Congress subject headings.

In 1994, a word search through UCLID of "Holocaust" yielded 747 book titles. At the University of Cincinnati, two reference librarians, familiar with the term "Holocaust revisionism," were unable to locate or explain the absence of the subheading "Holocaust, Jewish (1939-1945), revisionism" among the 314 subheadings on the Holocaust. They located the subheading "Holocaust, Jewish (1939-1945), errors, inventions, etc." which yielded the titles of two anti-revisionist books published in 1992 and one in 1993. According to the UCLID catalog, not a single author or book title pertaining to Holocaust revisionism is available at academic libraries in the State of Ohio.

At this point, an average Ohio graduate student would likely have discontinued his or her search for revisionism.

The modern and well-equipped Cincinnati Public Library provides uniquely unrestricted and self-help access for its users to the gargantuan database of the computerized catalog called "First Search". This catalog was compiled during the last two decades by the Online Computer Library Center [OCLC], Inc. The OCLC catalog provides a costly but easy access to about 2,000,000,000 volumes in 15,000 libraries in the United States and to about 3,000 large libraries in foreign countries.

In 1994, at the Cincinnati Public Library the OCLC database search yielded 8,881 titles on the subject "Holocaust, Jewish (1939-1945). The subject search "Revisionism" yielded 1,139 titles, mostly related to Leon Trotsky's revisionism of Bolshevism and revisionism in a field of engineering, as well as many books in foreign languages.

A reference librarian at the Cincinnati Public Library came upon a recent anti-revisionist title under the subject heading "Holocaust, Jewish (1939-1945), errors, inventions, misc." This subject heading yielded 149 titles in OCLC. The *Amicus* representative was able to identify 52 of these as representing Holocaust revisionist books, many of which were in French, German, Spanish, Swedish and Italian. Among them were the two above-mentioned foremost Holocaust revisionist books in the English language.

Arthur R. Butz's *The Hoax of the Twentieth Century* was located at five locations in the United States:

1. Library of Congress, District of Columbia
2. Columbus Metropolitan Library in Columbus, Ohio
3. St. John University, Collegeville, Minnesota
4. Concocheague District Library in Chambersburg, Pennsylvania
5. Manitowoc Public Library in Manitowoc, Minnesota.

John C. Ball's *Air Photo Evidence, Auschwitz, Treblinka...* was located at a single library in the United States:

- Allen County Public Library, Fort Wayne, Indiana.

- Over the last ten years, despite repetitious requests by Petitioner to purchase or accept as donation any Holocaust revisionist book, not a single such volume had been acquired by the Respondent as of April, 1994, through its practice of exclusionary censorship.

- Intense censorial acquisition practices against Holocaust revisionism by small, medium, and large American libraries are augmented by the imprecise, pejorative and/or erroneous labeling (cataloging) practices introduced by the Library of Congress, the undisputed leader in this field.

- American libraries have not followed the recent advances of scholarly Holocaust revisionism (such as the official, major lowering of the total victim count of the Auschwitz concentration camp). Consequently, they have not reclassified their thereby outdated books into the "errors, inventions, etc." subheading, nor have removed from a pejorative labeling category any historically accurate revisionist books.

6. "Books Won't Stay Banned. Ideas Won't Go to Jail. In the Long Run of History, the Censor and the Inquisitor Have Always Lost,"

The renowned Polish astronomer Nicholas Copernicus is a good example of how correct scientific ideas based on observations of physical facts (instead of eyewitness testimony that the earth is flat) were initially ostracized and labeled as "lunatic" (actually solarian). Copernicus, not protected by the First Amendment, could have his (then outlandish) discovery published only posthumously (in 1543). For almost two centuries, the heliocentric theory was magisterially proscribed *per curiam* and his books were banned. Vanguard and prescient scholars perished at the stake (Giordano Bruno in 1600), or were forced to recant (Galileo Galilei in 1633).

Despite persecutions and erroneous adjudication of science by the highest contemporary courts, the "lunatic fringe" theory of earth revolving around sun, with passage of time, became accepted as fact. Copernicus' theory of "earth revolutions around the sun" soon gave origin to the naming of historical events, first of the English (1688), then French (1780) and later American *Revolutions.*

Today, the intellectual importance of historical revisionism is politically decried and underrated. Its leaders have been assassinated (revisionist publisher Francois Duprai in France in 1976), bludgeoned (Professor Robert Faurisson in France in 1989), and banned, arrested and jailed (British historian David Irving, from Australia in 1993, in Canada in 1992,

and in England in 1994). Faced with the well publicized, recent devaluation of exaggerated WW II Holocaust claims, one must consider that in the future, some aspects of historical revisionism might follow the fate not of lunacy but of heliocentricity. The history of jurisprudence (and especially of the great Galilean trial) teaches that it is best for the courts not to adjudicate the leading edge of science.

Conversely, the recent history of science reveals that legislation favoring one side in a political or historic debate does not withstand the test of free scholarly inquiry. Such happened in the case of the racist theories of Nazism (Friedrich Nietzsche), the enviro-genetic theories of Communism (Trofim Lysenko), and the Soviet-provided 4,000,000 victim count of the Auschwitz concentration camp, "officially" reduced to about 1,500,000 in 1990, and to less than 800,000 in 1993. Nevertheless, in May of 1994, the German Bundesrat (Senate) passed a bill cutting off all debate on the WW II Holocaust.

"Books won't stay banned. Ideas won't go to jail. In the long run of history, the censor and the inquisitor have always lost," wrote Yale University President A. Whitney Griswold in 1952. But forty years later, at this renowned institution, ideas of historical revisionism are still quashed and at its famous Sterling Library, revisionists' books are still banned. It seems that over the centuries some academicians have insufficiently learned from the history of science and jurisprudence.

In December of 1993, editors of the Brandeis University campus newspaper supported the concept of free speech by printing a preposterous

advertisement of a populist Holocaust denier proclaiming that "[t]he U.S. Holocaust Memorial Museum displays no proof anywhere of homicidal 'gassing' chambers and no proof that even *one individual* was 'gassed'..." The newspaper was likely inspired by the words of the Justice Louis Brandeis who in 1927 wrote : "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by process of education, the remedy to be applied is more speech, not enforced silence."

It is the responsibility of publishers and librarians, as guardians of the people's freedom to read, to contest encroachments upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large.

It is inevitable in the give and take of the democratic process that the political, the moral, or the aesthetic concepts of an individual or group will occasionally collide with those of another individual or group. In a free society, each individual is free to determine for himself what he wishes to read, and each group is free to determine what it will recommend to its freely associated members. Nonetheless, no group has the right to take the law into its own hands, and to impose its own concept of politics or morality upon other members of a democratic society. Freedom is not freedom if it is accorded only to the accepted and the inoffensive.

It is the responsibility of publishers and librarians to give full meaning to the freedom to read by providing books that enrich the quality and diversity of thought and expression.

V. CONCLUSION:

For all of the foregoing reasons and for the reasons set forth in Petitioner's brief, *Amicus* respectfully requests this Court to grant the writ of certiorari submitted by the Petitioner.

Respectfully submitted,

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June 6, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of June, 1994, I caused to be served by first class mail, postage prepaid, a copy of Motion for Permission to File Amicus Curiae Brief and Amicus Brief of the Polish Historical Society upon:

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All parties required to be served have been served.

_____

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MOTION FILED
JUN 6 1994

(5)

No. 93-1713

In The Supreme Court of the United States
October Term 1993

DAVID WAYFIELD,

Petitioner,

v.

TOWN OF TISBURY, MARJORIE CONVERY,

Respondents.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The First Circuit

Motion For Permission to File Brief Amicus Curiae in Support of Petitioner

and

Amicus Curiae Brief Of The Polish Historical Society

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For The First Circuit

Motion For Permission To File Brief *Amicus Curiae* in Support of Petitioner

The Polish Historical Society (PHS) respectfully moves this Court for permission to file the accompanying *Amicus Curiae* brief in support of Petitioner. Consent was granted by the Petitioner for filing of a brief by the PHS and was filed with this Court's Clerk. Leave from this Court is requested under Rule 37 of this Court.

PHS is an educational organization committed to the promotion of free access to restricted archival materials pertaining to the history of the First and Second World Wars. The membership of the PHS includes scholars, individuals, U.S. citizens and lawful residents joined by a common interest in history.

The interest of *Amicus* is set forth below. The accompanying brief addresses issues of fact concerning the public at large, the Petitioner and Respondents. It describes both overt and surreptitious censorship, each of which constitute an abridgment of civil rights, not only by Respondents, the Vineyard Haven Public Library, but also by other public libraries as representatives of state and municipal authorities nationwide.

Amicus believes that its brief will supplement rather than reiterate the arguments made by the parties. Due to the national implications of the issues submitted by the Petitioner, PHS respectfully moves this Court for permission to file the *Amicus Curiae* Brief submitted herewith. Respondents oppose the filing of this brief.

Respectfully submitted,

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Amicus Curiae Brief Of The Polish Historical Society in Support of the Petitioner

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TABLE OF CONTENTS

I. Interest of Amicus....1

II. Purpose of Amicus....3

III. Summary of Argument....3

IV. Argument:

1. Public Libraries Ostensibly Observe the First Amendment....4

2. How Public Libraries Fight Outside Censorship....5

3. Public Libraries Vulnerable to Outside Censorship Despite American Library Association Codes....6

4. Forms of Intralibrary Censorship Practiced by Public Libraries....7

- Exclusionary acquisition policy....8
- Covert intralibrary censorship....9

1. Exclusionary labeling....9
2. Prejudicial labeling....9
3. "Silent" censorship....10
4. "Referral" censorship....11

5. Lack of African-American Revisionist Materials in Public Libraries....11

6. Lack of Holocaust Revisionist Materials in Public Libraries....14

7. A Minnesota Library System Is an Exception to the Rule Regarding Nationwide Intralibrary Censorship....18

8. "Books Won't Stay Banned. Ideas Won't Go to Jail. In the Long Run of History, the Censor and the Inquisitor Have Always Lost."....18

V. Conclusion....20

I. INTEREST OF *AMICUS CURIAE*:

The Polish Historical Society [PHS] was established in 1988 as an educational organization committed to the promotion of free access to restricted archival materials pertaining to the history of the First and Second World Wars. PHS specializes in retrieval, collection, and release of archival documentation, which until recently was reposited in archives with restricted access.

The membership of the PHS includes scholars, individuals, citizens and lawful residents of the United States, joined by common interests in the history of both World Wars, including the history of the Jews who prior to 1939 constituted about one tenth of the population of Poland.

Amicus holds itself to be an expert at evaluating the completeness and balance of library collections on the subject of both World Wars. Struck by a profound imbalance on this matter at many major libraries, and then at the Respondent Vineyard Haven Public Library [VHPL], the PHS decided to file the instant brief.

Amicus is committed in principle and practice to the freedoms afforded and protected by the First Amendment and recognizes that scholarly progress cannot proceed without free inquiry. *Amicus* supports affirmative enforcement of the American Library Association's Library Bill of Rights which states that:

> "Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval."

In the Middle Ages, science and humanities were static and stifled by restriction of speech and thought. This era is consequently now remembered with disapprobation. The Renaissance occurred after freedom of speech and inquiry was won following centuries of effort and through the tenacity of a few.

Freedom of speech and inquiry includes historical revisionism. Revisionism must be an integral part of the historical analysis of both World Wars, because major participants also fought with words. The historical record must be set straight on some fictitious wartime propaganda, especially Soviet press reports, which were then accepted as factual in the West.

Calls for suppression of debate and of historical revisionism appear as a return to the principles of the Dark Ages which, among other

unscientific impositions, claimed that an observable straight horizon is undebatable proof of the flatness of the earth. Justice Louis Brandeis provided an answer for those who are concerned about propriety of historical revisionism:

> "[t]o expose ... fallacies... the remedy... is more speech, not enforced silence."

The revisionist process is already ongoing. For instance, in recent years it was finally publicized world wide that 4,500 Polish officers had been murdered at Katyn by the Soviet NKVD in 1940. Yet, within the past decade, a Soviet documentary shown on American television screens was still blaming the Nazis for this massacre, with backup from supposed local "eyewitnesses" in a wartime propaganda film clip. This example shows that historical revisionism is a never-ending process that on occasion must augment the educational process. Christopher Hitchens, a well-known editor, concluded his December 1993 essay on historical revisionism in *Vanity Fair* as follows:

> "The revisionist endeavor is something that every generation *must* embark upon, whether it's the Holocaust or any other subject."

By analyzing until recently unavailable physical documentation in regard to the Nazi concentration camps (data from wartime aerial photography, post-war archeological explorations, forensic toxicology in regard to Zyklon B and diesel exhaust, and chemical technology of the fabrication of soap), it was realized that many of the World War II Holocaust claims, especially Soviet, were exaggerated, as has been acknowledged by Jewish scholars. Furthermore, in the process of its studies, *Amicus* uncovered a similarity between the patterns of martyrology of the First and the Second World Wars, which provides a new insight into this matter.

Amicus' convictions about the World War II Holocaust have been articulated in a document entitled "Holocaust Is Undeniable But It Should Be Debated," reprinted almost in its entirety on January 1, 1994 by the editors of *The New York Times* under the headline: "Don't Cut Off All Debate About the Holocaust."

Amicus opposes most of the arguments offered by those who have been described as "Holocaust deniers." However, *Amicus* agrees with some scholarly tenets of some Holocaust revisionists, which are also accepted by widely recognized Jewish historians.

II. PURPOSE OF *AMICUS* BRIEF:

The gravamen of the Petitioner's complaint is the discriminatory treatment he received from Respondents, the Tisbury Senior Center and the local Vineyard Haven Public Library [VHPL], both public community forums.

Because the rules of this Court require brevity, Wayfield's Petition asserts, but does not document in depth, an intense censorship, practiced by the Respondent VHPL in contravention of its own regulations. Neither did the Petitioner discuss a similar censorship practiced by library authorities whose guidance the VHPL follows, such as CLAMS [Cape Library Automative Material Sharing], a regional consortium of public libraries; Library of Congress, the national leader in the area of labeling and acquisitions; and OCLC [Online Computer Library Center], the world leader in cataloging. *Amicus'* brief fills this gap and documents such unconstitutional censorship.

III. SUMMARY OF ARGUMENT:

1. It appears that the near total absence in public libraries of World War II and African-American historical revisionist books and materials represents, under color of law, discrimination and abridgment of freedom to speak and read. Examination by *Amicus* of holdings and practices of various libraries revealed that such an abridgment of First Amendment rights is encountered not only at the Respondent Martha's Vineyard library but is practiced nationwide.

Amicus believes that the intense, intralibrary censorship practiced by these libraries is self-imposed. It evolved over decades as a result of insufficient governmental funding and/or overdependence of public libraries upon private contributors. Thus, public libraries were induced to follow politically fashionable trends, and consequently they discriminate against and suppress unpopular views.

2. *Amicus* argues that the singular, 1990 victory of the press (*Chicago Sun-Times*) and public opinion, in overcoming initially successful censorship by private organizations impressed upon a public institution (the Chicago Public Library regarding a comprehensive bibliography of the Palestinian-Israeli conflict prepared by an employee of this library), should not be considered as a sufficient safeguard of First Amendment rights elsewhere. Therefore, affirmative involvement of this Court is needed in the instant case and other such cases.

IV. ARGUMENT:

1. PUBLIC LIBRARIES OSTENSIBLY OBSERVE THE FIRST AMENDMENT:

In order to avoid abridgment of the First Amendment, virtually all public libraries in the United States subscribe to the American Library Association's [ALA] Library Bill of Rights which stipulates that:

> "2. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval."

Acquisitions are usually at the forefront of controversies in libraries. Most small libraries do not have a formal, written selection policy for acquisitions, although this is recommended by the ALA. More than likely, their overburdened staff does not have time to prepare such in a written format, and this suffices as long as none of the small number of library users object to this deficiency. Nevertheless, virtually all public libraries accept and practice the precepts set forth in the *Materials Selection Policy Summary* of the Santa Monica Public Library, which calls for diversity and for satisfying the needs of various groups within the community:

> "1. The basic test for selection of any item is whether it is of permanent, current, or potential value to the community. Other criteria include the quality, cost, format, published reviews, public demand, and availability of the material.
>
> 2. Materials are selected to satisfy the prevalent needs and interests of the majority of the community as well as diverse groups within the community.
>
> 3. The Library attempts to present differing viewpoints on contemporary issues, some of which are controversial. Selected materials, therefore, may be meaningful and significant to some individuals, while offensive, shocking, or boring to others. Materials are selected for their overall contribution to collection."

Predicated on limits of budget, shelf space, and degree of community interest, every library is compelled to select and reject printed and audio-visual materials. Libraries also must avoid redundancy on popular topics and establish a balanced presentation of opposing views. Such selection and rejection is necessary and constitutional and does not abridge the spirit of the First Amendment as long as the selection is not discriminatory.

Most libraries do indeed apply the above freedom to read and speak guidelines as long as the censorial pressure comes in the area of topics

debated by the mainstream news media. However, intense and nationwide departures are found in the form of internal censorship in the area of politically unfashionable or unpopular topics, especially if such controversy might affect library funding. Such internal censorship in this area is found nationwide: in small libraries such as the Respondent VHPL, in medium and major libraries in towns and cities, in regional and statewide library systems, and even in the two largest American libraries, the Library of Congress and the New York Public Library.

2. HOW PUBLIC LIBRARIES FIGHT OUTSIDE CENSORSHIP:

The egalitarian policy of libraries is buttressed against any of the outside-of-the-library pressures for favoritism and accusations of censorship. The safeguarding organizations were established by and are located at the Chicago headquarters of the American Library Association [ALA], the oldest and largest in the world organization of 56,000 librarians:

1. The Intellectual Freedom Committee [IFC] was established in 1940 as an advisory unit constantly reviewing and updating the policies which protect, enforce, and address the rights of the First Amendment.

2. The Office of Intellectual Freedom [OIF] was established in 1967 as a watchdog against censorship directed at libraries. Through its monthly *"Newsletter on Intellectual Freedom,"* it informs libraries about outside censorial pressures and ongoing legislative battles at various local courts. One of its permanent columns is devoted to reporting on the decisions of this Court. The last page of this newsletter, entitled "Intellectual Freedom Bibliography," provides the libraries with a digest of American daily press and periodicals on the subject. In addition, the OIF prepared and periodically updates the Intellectual Freedom Manual, available at nearly every public library.

3. The Freedom to Read Foundation [FRF] was established in 1969, essentially to provide legal aid for librarians and libraries accused by the public and/or government of liberalism in acquisition policies. FRF has previously filed with this Court various *amici* briefs opposing outside restrictions on acquisition policies of libraries.

ALA, FRF, OIF and IFC are the authors and sponsors of remarkable documents. The ALA's Library Bill of Rights, the *Magna Carta* for librarians and readers everywhere, protects freedom of speech and diversity of library collections. The FRF's Freedom to

Read Statement stipulates the responsibilities of librarians and lays the ground rules for would-be censors:

> "It is the responsibility of publishers and librarians, as guardians of the people's freedom to read, to contest encroachments upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large."

Thus, during the past decades, armed with the above tools, libraries skillfully and forcefully resisted outside censorial pressures in order to protect themselves from potential litigation based on First Amendment contravention, especially when it involved communism, abortion rights, homosexuality, lesbianism and/or pornography. As demonstrated on the following pages, however, libraries fail to do so when subjects are politically unpopular and might, on balance, impact adversely upon their funding. During the October 1988 Term (No. 88-605), the ALA and FRF informed this Court about this shortcoming:

> "function [of] libraries is crucial to the flourishing [of] 'marketplace of ideas' celebrated in this Court's fundamental First Amendment jurisprudence. But despite the tradition of 'freewheeling inquiry' in America's libraries, ... libraries occupy a perilous niche in our society: most of our libraries are publicly founded institutions subject to state control not only through the police power but also through the power of the purse." (ALA's *Amicus* brief, p. 4)

In summary, libraries have developed effective rules, skills and the Library Bill of Rights to defend the freedom to know, read and speak, provided this does not affect their fiscal base. However, libraries lack any built-in safeguards, other than actions of this Court, against their self-imposed internal censorship based on funding pressures.

3. PUBLIC LIBRARIES VULNERABLE TO OUTSIDE CENSORSHIP DESPITE AMERICAN LIBRARY ASSOCIATION CODES:

Libraries' quest for balance of collections and freedom to read and speak usually hinges on the "power of the purse" which often exacts adherence to "political correctness." However, one library, when supported by the mainstream press, won a victory over influential outside censors even though initially it had to cave in to their demands.

In an ongoing process of providing patrons with reading lists on various topics, the Chicago Public Library compiled in 1989 a

bibliography on the Palestinian-Israeli conflict. It included 147 books, containing a balanced mix of pro-Israeli and pro-Palestinian views. According to an expose entitled "The Jewish Thought Police" by Robert Friedman in the July 27, 1993 issue of the New York City based weekly *The Village Voice*:

> "[this] bibliography was widely praised by academics, and was used as a teaching aid by the prestigious Center for Middle East Studies at the University of Chicago. [But then] [i]n August 1989 Chicago's Chief Librarian Samuel F. Morrison received a call from a prominent Jewish patron, complaining about the 'biased' bibliography."

After six months of censorial pressure, according to *The Village Voice*:

> "the library capitulated, agreeing in writing to include more than 30 titles selected by the league in a revised bibliography which would be compiled by someone [else]".

Two weeks later, *Chicago Sun Times* columnist Dennis Byrne revealed attempts of outside censors to influence the Chicago Public Library and thus its readers. After a flurry of letters to the editor and negative press coverage, the censors backed away from their high pressure lobbying campaign, and the bibliography was updated and reprinted for the public in 1990, without outside and/or intralibrary interference.

First Amendment rights remain vulnerable not only for libraries, but also for other institutions. For instance, according to the June 2, 1992 issue of *The Washington Post*, curators of the Smithsonian Institution exhibit entitled "The West as America: Reinterpreting Images of the Frontier, 1820-1920" replaced ten of the fifty-five revisionist exibition texts, when pressured that Congress might reduce funding. Thus, resistance in Chicago to outside censorship is not a sufficient safeguard of the First Amendment rights elsewhere in the United States.

4. FORMS OF INTRALIBRARY CENSORSHIP PRACTICED BY PUBLIC LIBRARIES:

Libraries and librarians rarely practice overt censorship as in the case of the Palestinian/Israeli bibliography prepared for the Chicago Public Library in 1990. More often they utilize methods of surreptitious internal censorship and selection policies. All variants of censorship described below were encountered in connection with the subject of this brief.

Exclusionary acquisition policy:

The most common form of censorship practiced by public libraries is an exclusionary acquisition policy. Printed and audiovisual materials which are disapproved are simply not purchased. To avoid acquiring such materials, libraries follow various practices:

1. When a reader requests the acquisition of a book on an unfavored topic, a librarian invariably accepts the request form, but the library usually does not act upon it. Procrastination commonly vitiates the reader's interest.

2. If a reader pursues his request, the library's response is usually among the following:

- The item has not been reviewed by any leading review journal such as the independent *Library Journal,* or the *Booklist* sponsored by the American Library Association [ALA]. (Librarians *a priori* consider reviews in revisionist journals as not authoritative for this purpose.)
- The item is published by a small and unrecognized publisher, rather than by a well-known publishing house.
- The library's acquisition board will make purchasing decisions.
- The library lacks sufficient funds for the purchase.
- There is a lack of community interest in the subject. When replying thus about Holocaust revisionism, however, many librarians do not consider or are unaware that:

  -- the editor of *Martyrdom and Survival,* the flagship publication of Holocaust survivors in America and of the Yad Vashem Memorial in Jerusalem, wrote in the December 1993 issue that we live in "the era of Revisionism";

  -- at least four anti-revisionist books, highly publicized and acquired by most libraries, have been published in the last two years;

  -- about 60% of about 408 articles about the Jewish Holocaust, published in the past three years in five leading newspapers in the United States, refer to Holocaust revisionism;

  -- 9-22% of adult Americans have doubts about the extent of the Jewish Holocaust according to recent public opinion polls.

3. Libraries exclude controversial material by not accepting it as a gift (as happened in the case of the Respondent library). When rarely accepted, controversial donations:

- have been prematurely weeded out to make room for new acquisitions;

- have been prematurely weeded out because of worn condition and not replaced;
- soon after the donation have disappeared from bookshelves and have not been replaced;
- have been sequestered in a "research room" or labeled as for "reference only," and thus have been accessible only on the library premises.

Covert intralibrary censorship:

For the purpose of this brief, the intralibrary covert censorship practiced by librarians is subdivided into four types: 1. exclusionary labeling, 2. prejudicial labeling, 3. "silent" censorship, and 4. "referral" censorship.

1. **Exclusionary labeling** of unfavored books in cataloging is prevalent. This effectively stymies the reader and prevents access to potential sources.

Censorship by exclusionary labeling is evidenced by the lack of subject headings such as: "African-American revisionism", "Holocaust revisionism" or the holocausts of Amerindians, Armenians, Ukrainians, Gypsies, Cambodians and others, each referring to mass deaths and atrocities against these peoples.

As initiator of subject headings, the Library of Congress is primarily responsible for subject heading deficiencies. The majority of other libraries, public and private, follow its practices. Cataloging centers and local libraries have the option of adjusting and augmenting their subject headings as needed, but rarely exercise it.

2. **Prejudicial labeling** in library catalogs deters prospective readers. It is thoroughly condemned by the ALA in its July 1, 1981, "Statement on Labeling", "[a]n interpretation of the Library Bill of Rights":

> "Labeling is the practice of describing or designing certain library materials by affixing a prejudicial label to them or segregating them by a prejudicial system. The American Library Association opposes this as a means of predisposing people's attitudes towards library materials for the following reasons:
>
> 1. Labeling is an attempt to prejudice attitudes and as such, is a censor's tool.
>
> 2. Some find it easy and even proper, according to their ethics, to establish criteria for judging publications as objectionable. However, injustice and ignorance rather than justice and enlightenment result from such practices, and the American Library Association opposes the establishment of such criteria.

> 3. Libraries do not advocate the ideas found in their collections. The presence of books and other resources in a library does not indicate encouragement of their contents by the library.
>
> The American Library Association opposes efforts which aim at closing any path to knowledge."

Pejorative labeling is illustrated by the subject heading "Holocaust, Jewish (1939-1945), errors, inventions, etc." The fact that revisionist books are placed into this category undoubtedly contributes to the reluctance of American libraries to acquire them. Conversely, dozens of titles of non-revisionist books that contain factual errors, widely recognized by scholars, about the Jewish Holocaust were not placed into this category.

The Library of Congress is ultimately responsible for faulty labeling of a book. Its Cataloging Directorate, employing about 200 librarians, assigns subject headings for books acquired or submitted prior to printing by publishers. This government-performed labeling is rarely if ever changed by public libraries, and if it is inaccurate, may stigmatize a book forever.

3. **"Silent" censorship** of cataloging is of exclusionary nature. Regarding the subject of the instant case, it misleads readers, including students and professors, who after completion of a substantial catalog search are left with the impression that books on revisionist subjects do not exist.

"Prism" is the world's largest cataloging service, compiled during the last two decades by the Online Computer Library Center [OCLC]. It provides rapid access to about 2,000,000,000 volumes in about 15,000 libraries in the United States and 3,000 in foreign countries.

In May 1994, "Prism" was readily available to the students and faculty at the St. John's University Library in Jamaica, New York. Under the subject heading "Holocaust revisionism", "Prism" listed only two titles. One is a non-revisionist book (probably through a computer error) and the other is a Holocaust revisionist booklet by an unidentified author, published in 1986 in Canada and reposited in a library in Kansas. Hidden under the subheading "Holocaust, Jewish, errors, inventions, etc.", "Prism" listed 52 titles (about 100 copies) of Holocaust revisionist books, constituting labeling too cryptic to be useful for most librarians and readers.

Thus, OCLC systematically excludes revisionist books from their appropriate primary subject heading of "Holocaust revisionism" and/or assigns them to the pejorative subject subheading "Holocaust,

Jewish (1939-1945), errors, inventions, etc." The result is exclusionary censorship. Such censorship has a significantly misleading impact on the knowledge of society in general, because the "Prism" catalog is most frequently used by academic libraries and research services of the news media.

4. **"Referral" censorship** is also found to be practiced nationwide. Libraries refuse to acquire controversial books but suggest that they can be borrowed through an interlibrary loan. Generally, this process takes two to six weeks of waiting for a book if it is not in circulation.

However, it is difficult to see how such requests might be satisfied for some topics. Books cannot be effectively borrowed if there are too few or none to be borrowed. For example, "First Search" lists the album of wartime aerial photos of Nazi concentration camps entitled *Air Photo Evidence...* by John Ball, published in Canada in 1992 (*infra*: page 15), in only one library in the United States, and nowhere else in the world, according to OCLC's catalog database. Not a single library in California has the revisionist book about the Kristalnacht entitled *Flashpoint...* by Ingrid Weckert, published in California in 1991 (*infra:* page 14).

In summary, *Amicus* believes that over the decades, libraries reluctantly developed a panoply of covert censorial techniques, which they successfully use to avoid controversies and to preserve the flow of private and governmental funds to their libraries. To amend a resultant abridgment of First Amendment principles in the instant case and in other such cases, an affirmative ruling is needed from this Court.

5. LACK OF AFRICAN-AMERICAN REVISIONIST MATERIALS IN PUBLIC LIBRARIES:

An authority on the subject of African-American studies, albeit surrounded by controversy, is City College of New York Professor Leonard Jeffries. Within the past year, he was reinstated as the Chairman of the department from which he had been dismissed after 20 years of service. The dismissal followed his public speech four years ago in Albany, New York in which he expressed unpopular views stemming from his research on the ethnic background of slave traders in England and America. Jeffries won a highly publicized March 1994 trial in New York City. In addition to reinstatement, he was awarded $400,000 in damages due to improper dismissal.

Amicus obtained from Professor Jeffries a list of the seven foremost books on the subject of African-American historical revisionism.

These books, rightly or wrongly, claim overrepresentation of persons of the Jewish faith in the slave trade and describe flourishing civilizations in pre-colonial Africa. Their titles are as follows:

1. *Stolen Legacy* by George G. James, pub. in 1954.
2. *Africa: Mother...* by Yosef Ben-Jochannan, pub. in 1988.
3. *Message to the Blackman...* by Elijah Muhammed.
4. *Iceman Inheritance...* by Michael Bradley, pub. in 1991.
5. *African Origin...* by Cheikh A. Diop, pub. in 1974.
6. *Stolen Legacy...* by George G. J. Richardson, pub. in 1988.
7. *Civilization or Barbarism...* by Cheikh A. Diop, pub. in 1991.

Oak Bluffs and Vineyard Haven are little towns on Martha's Vineyard in Massachusetts. Oak Bluffs has a small, year-round community of African-American intellectuals dating back almost 150 years. In summer, it swells with vacationing African-Americans who account for 30% of the summertime Oak Bluffs population.

According to projections of the U.S. Population Census, Oak Bluffs in 1990 consisted of 2,517 white and 193 (or 7.7%) black year-round residents. In 1990, Vineyard Haven consisted of 3,120 year-round inhabitants of which 85 (or 2.9%) were African-American. Because of the three-mile proximity of Vineyard Haven and Oak Bluffs, both are served by the Respondent VHPL.

A search through CLAMS, a computerized catalog of 23 libraries in Martha's Vineyard and the Cape Cod region, which include the Respondent VHPL, revealed that none of the above mentioned African-American revisionist books dealing primarily with the history of American slavery were available at these libraries and none at the Respondent VHPL.

Next, a search through CLAMS for the book entitled *Uncle Tom's Cabin* revealed two copies in the entire Cape Cod/Martha's Vineyard system. Seven libraries in the CLAMS system contain at least thirty-four copies of *Anne Frank, the Diary of a Young Girl*, with the Respondent VHPL containing two copies of this book.

Darien is an old Connecticut coastal town, one of the wealthiest in the United States. According to the projections of the 1990 U.S. Census, the population of Darien in 1993 consisted of about 18,000 inhabitants, 96.5% Caucasians and 0.5% Blacks. Until about two decades ago, Darien was a homogenous community of White Anglo-Saxon Protestants, who were legally and successfully resisting the influx of first Catholics, and then Blacks, Jews, and immigrants. Today, there is a small number of Jewish Americans in Darien and few African-Americans have thus far moved into this community.

According to Connecticut State Library records, the Darien Library "is the busiest public library in Connecticut on a per capita basis." A catalog search through the Connecticut-wide "reQuest", a computerized database encompassing 157 libraries, revealed that the Library of Congress never created a subject heading on African-American revisionism, thus making a search unattainable for someone unfamiliar with this subject. From the seven abovementioned books, the first four were not available at this or any other Connecticut library, while twenty-eight copies of the latter three books were located in "reQuest" libraries.

The Darien Library contains two copies of *Uncle Tom's Cabin*. There are twenty-four copies of the Anne Frank diary in the library, due to the needs of schoolchildren according to the library's administration.

The reference librarians at the New York Public Library, the second largest in the nation, were able to instantly provide *Amicus* the transcript of Professor Jeffries' "offending" speech delivered in 1990. However, in his home city, they were unable to find, in any of the library catalogs available to them (their own or the worldwide OCLC), any of the above-listed African-American revisionist books submitted by Professor Jeffries. This example provides illustration of institutionalized suppression and "silent" censorship.

In summary, *Amicus* believes that:

- The absence of African-American revisionist books at the Respondent library is discriminatory and contradicts the library's written policy claiming adherence to and encouragement of diversity of subjects and viewpoints.

- The paucity of African-American revisionist books in 157 Connecticut libraries contradicts the libraries' own written policy regarding diversity of subjects and viewpoints, prescribed in the Intellectual Freedom Handbook published by the Connecticut Library Association. Thus it may represent, under color of law, discrimination, censorship and/or abridgment of freedom to speak and read.

- The failure of the Library of Congress, the national leader in labeling, to create a subject heading on African-American revisionism effectively blacked out this subject nationwide and deprived citizens of their right to read and know divergent views, in contravention of the First Amendment.

6. LACK OF HOLOCAUST REVISIONIST MATERIALS IN PUBLIC LIBRARIES:

Examination by *Amicus* of Vineyard Haven Public Library:

In April, 1994, the Respondent Library (VHPL), with a total of about 50,000 volumes in its stacks, was visited by an *Amicus* representative. The purpose of the visit was to examine its holdings primarily for the presence or absence of any Holocaust revisionist materials. This visit confirmed that the Petitioner's multiple requests over a number of years, that the VPHL purchase such materials or accept them as donations, had proved unsuccessful.

At first, a reference librarian was requested to help. She appeared eager and very familiar with the term "Holocaust." The library catalog's subject heading "Holocaust, Jewish" revealed the presence of 23 books. She seemed vaguely familiar with the term "revisionism", but her enthusiasm faltered into disappointment and exasperation when she realized that "revisionism" was absent from among 133 subheadings on the Holocaust. She exhausted all possibilities of her library's own computerized catalog and those of the CLAMS, a computerized database system which encompasses 23 regional libraries. She suggested that on some other day, the Boston Public Library might be of help in finding such books. Neither she nor two other librarians on duty knew that for Holocaust revisionist materials they should search the holdings of other CLAMS libraries under the subject subheading "Holocaust, Jewish (1939-1945), errors, inventions, etc."

Then, the *Amicus* representative personally checked the VHPL catalog and shelves as well as the CLAMS database without any librarian's assistance. It was found that VHPL uses the Library of Congress subject headings and the Dewey Decimal cataloging system. In these systems of classification, "Holocaust, Jewish (1939-1945)" is subdivided into 314 subheadings. Neither a subheading "Holocaust, Jewish (1939-1945), revisionism" nor the subject heading "Revisionism" exist.

Next, the VHPL catalogs were checked for the presence or absence of three foremost Holocaust revisionist titles and books:

- *The Hoax of the Twentieth Century* by Arthur R. Butz, Noontide Press, 1976, a re-evaluation of the "Final Solution" by a tenured Northwestern University professor;
- *Flashpoint: Kristallnacht 1938, Instigators, Victims and Beneficiaries* by Ingrid Weckert, Noontide Press, 1991, authored by a German librarian fluent in English and Hebrew;

- *Air Photo Evidence, Auschwitz, Treblinka...* by John C. Ball, Ball Resource Services, 1992; an album of high resolution wartime aerial photographs of Nazi concentration camps and the site of the Katyn massacre.

None of these books could be found on the VHPL shelves or in the VHPL and CLAMS catalogs. This exhausted the potential resources of the Respondent library and its regional database in regard to Holocaust revisionism.

At this point, an average Martha's Vineyard reader would have dropped his or her search for revisionism or Holocaust revisionism, considering this to be a marginal fad, not worthy of attention because of lack of documentation.

Examination by *Amicus* of Holocaust Revisionist Holdings in Libraries of Medium-Sized Cities:

The next phase of examining the availability of revisionist materials was accomplished in Stamford, Connecticut, a medium-sized city in the New York metropolitan area. Its Ferguson Library contains about 500,000 volumes on its shelves, uses the Library of Congress subject heading classification along with "reQuest", a statewide computerized catalog encompassing 157 libraries, and "InfoTrack," an index to 1,100 American periodicals and five major newspapers.

At different times, two reference librarians at the Ferguson Library were asked in early 1994 for help in locating any Holocaust revisionist materials. These librarians checked the library's computerized catalog through subject heading and word searches, which yielded no results. They then said that they could proceed no further unless the requester knew the name of some revisionist book.

At this point, an average reader would likely have abandoned the search. However, *Amicus* discovered that under the subject heading "Holocaust, Jewish (1939-1945), errors, inventions, etc.", the "reQuest" computerized catalog lists 12 books, of which 6 are revisionist and 6 are anti-revisionist.

Examination by *Amicus* of Holocaust Revisionist Holdings in Large City Libraries:

Cincinnati, Ohio is a large industrial city with large universities. The Cincinnati Public Library contains about 5,000,000 volumes. It is conjoined with other libraries in the state within OhioLINK, a computerized catalog network. University libraries in Ohio are conjoined within UCLID, an academic computerized catalog network listing scholarly books and materials. Both of these computerized catalog systems use the Library of Congress subject headings.

In early 1994, a word search through UCLID of "Holocaust" yielded 747 book titles. At the University of Cincinnati, two reference librarians, familiar with the term "Holocaust revisionism," were unable to locate the subheading "Holocaust, Jewish (1939-1945), revisionism" and were perplexed by its absence among the 314 detailed subheadings on the Holocaust. After careful scrutiny of the available subheadings, one of the librarians selected "Holocaust, Jewish (1939-1945), errors, inventions, etc." It yielded the titles of two anti-revisionist books published in 1992 and one in 1993, but no revisionist books.

According to the UCLID catalog, not a single author or book title pertaining to Holocaust revisionism is available at academic libraries in the State of Ohio. At this point, an average Ohio graduate student would likely have discontinued his or her search for revisionism.

The modern and well-equipped Cincinnati Public Library provides uniquely unrestricted and self-help access for its users to the gargantuan database of the costly, OCLC-based, computerized reference service called "First Search", encompassing about 15,000 American and 3,000 foreign libraries.

In 1994, at the Cincinnati Public Library the OCLC database search yielded 8,881 titles on the subject "Holocaust, Jewish (1939-1945). The subject search "Revisionism" yielded 139 titles, mostly related to Leon Trotsky's revisionism of Bolshevism and revisionism in a field of engineering, frequently in foreign languages.

Spurred by her earlier interest in anti-revisionism, a reference librarian at the Cincinnati Public Library conducted an indirect search and came upon the subject heading "Holocaust, Jewish (1939-1945), errors, inventions, etc." This heading yielded 149 titles in the OCLC catalog. The *Amicus* representative was able to identify 52 of these as representing Holocaust revisionist books, many of which were in French, German, Spanish, Swedish and Italian. Among them were two of the three (*supra*: pages 14 and 15) foremost Holocaust revisionist books in the English language:

1. The OCLC's "First Search" catalog lists the Arthur R. Butz book, *The Hoax of the Twentieth Century* (of which about 30,000 copies in six printings have been sold), in five libraries, all in the United States:

> Library of Congress, Columbus Metropolitan Library in Ohio, St. John's University in Minnesota, Concocheague District Library in Pennsylvania, Manitowoc Public Library in Minnesota.

2. The OCLC's "First Search" catalog lists John C. Ball's album, *Air*

Photo Evidence, Auschwitz, Treblinka... in a single library:

> Allen County Public Library, Fort Wayne, Indiana.

The abovementioned revisionist book was purchased by this library in March 1994. By June 1994 it had circulated five times, which is on a par with bestsellers, even though this book has never been reviewed or even mentioned in any mainstream publication. On the other hand, non-revisionist Holocaust books, likewise not reviewed in the mainstream press but acquired by libraries, frequently do not circulate, or are read once or twice over the years.

3. The availability of Ingrid Weckert's *Flashpoint* was examined through the OCLC's catalog service "Prism" (*supra*: page 10), available at the St. John's University Library in Jamaica, New York. "Prism" lists *Flashpoint...* in nine libraries, all in the United States:

> Fairfield University Library in Connecticut, Fordham University Library in New York, Purdue University Library in Indiana, University of Michigan Library in Michigan, St. John's University Library in Minnesota, Newark Public Library in New Jersey, Milwaukee Public Library in Wisconsin, Prescott Public Library in Arizona, and Allen County Public Library in Fort Wayne, Indiana.

Flashpoint... is a scholarly book with an alternative view on the background of the Kristalnacht. According to the "Prism" catalog, three years after its publication, *Flashpoint...* has not been acquired by the Library of Congress, the largest in the world library holding over 101 millions of volumes, nor the New York Public Library, the largest in the world "non-statutory" library holding 18 million volumes.

From the above analysis, one has to conclude that the unofficial, but *de facto,* restriction on the acquiring and labeling of Holocaust revisionist materials is nearly complete and results from:

> "the shadow of fear cast by these [censorial] pressures [which] lead, we suspect, to even larger voluntary curtailment of expression by those who seek to avoid controversy"

as predicted in the 1981 Freedom to Read Statement of the American Library Association and the Freedom to Read Foundation.

In summary, ***Amicus*** believes that:

- Despite repetitious requests by the Petitioner over the last ten years for any Holocaust revisionist book to be purchased or accepted as a donation, not a single such volume had been acquired by the Respondent library as of April 1994, through its practice of exclusionary censorship.

- The nationwide and intense censorial acquisition practices against Holocaust revisionism exercised for decades by small, medium, and large American libraries are conducted against the libraries' own rules, and are augmented by censorial cataloging practices introduced by the Library of Congress.

7. A MINNESOTA LIBRARY SYSTEM IS AN EXCEPTION TO THE RULE REGARDING NATIONWIDE INTRALIBRARY CENSORSHIP:

The prevailing, nationwide intralibrary censorship and blackout of African-American and Holocaust revisionism at public libraries is not total. For instance, the Hennepin County Library System, consisting of twenty-five library branches in Minnesota, expanded the list of Holocaust subject headings as follows:

> Armenian genocide; Gay Holocaust; Holocaust, Jewish (1933-1945); Holocaust Revisionism; Holocaust, Soviet; Native Americans' Holocaust; Polish Holocaust; and Romany Holocaust.

The first Holocaust revisionist book, entitled *Le Mensonge d'Ulyse*, was written in 1950 by Paul Rassiner, a French geographer and survivor of Nazi concentration camps including Buchenwald. Since then, about 100 additional Holocaust revisionist books have been printed, with the 1992 *Air Photo Evidence* ... album of the Allied wartime aerial photography of the Nazi concentration camps (*supra*: page 15) being the most recent and most evidentiary.

In contrast to the Hennepin County Library System containing only 219,000 book titles, the vast Library of Congress has yet to establish a Holocaust revisionism category, even though there has long existed a group of books to which this label is directly applicable, so as to lead a prospective reader thereto directly and via the most commonly used terminology.

On the other hand, the Library of Congress established 215 subdivisions for most of the 314 Holocaust sub-headings, e.g. "Personal narratives" (of Holocaust survivors) which permit access to 480 book titles. Some of these subdivisions encompass only one book, e.g. referring to a small Polish village, Wlodawka.

Amicus believes that only an affirmative order of this Court in the instant case will ameliorate such intralibrary censorship practiced at the Respondent library and other public libraries in the United States.

8. "BOOKS WON'T STAY BANNED. IDEAS WON'T GO TO JAIL. IN THE LONG RUN OF HISTORY, THE CENSOR AND THE INQUISITOR HAVE ALWAYS LOST."

The renowned Polish astronomer Nicholas Copernicus is a good example of how correct scientific ideas based on observations of

physical facts (instead of eyewitness testimony that the earth is flat) were initially ostracized and labeled as "lunatic" (actually solarian). Copernicus, not protected by the First Amendment, could have his (then outlandish) discovery published only posthumously (in 1543). For almost two centuries, the heliocentric theory was magisterially proscribed *per curiam* and his books were banned. Vanguard and prescient scholars perished at the stake (Giordano Bruno in 1600), or were forced to recant (Galileo Galilei in 1633).

Despite persecutions and erroneous adjudication of science by the highest contemporary courts, the "lunatic fringe" theory of earth revolving around sun, with passage of time, become accepted as fact. Copernicus' theory of "earth revolutions around the sun" soon gave origin to the naming of historical events, first of the English (1688), and later American and French *Revolutions*.

Today, the intellectual importance of historical revisionism is politically decried and underrated. Its leaders have been assassinated (revisionist publisher Francois Duprai in France in 1976), bludgeoned (Professor Robert Faurisson in France in 1989), and banned, arrested and jailed (British historian David Irving, from Australia in 1993, in Canada in 1992, and in England in 1994). Faced with the well publicized, recent devaluation of exaggerated World War II Holocaust claims, one must consider that in the future, some aspects of historical revisionism might follow the fate not of lunacy but of heliocentricity. The history of jurisprudence (and especially of the great Galilean trial) teaches that it is best for the courts not to adjudicate the leading edge of science.

Conversely, the recent history of science reveals that legislation favoring one side in a political or historic debate does not withstand the test of free scholarly inquiry. Such happened in the case of the racist theories of Nazism (Friedrich Nietzsche), the enviro-genetic theories of Communism (Trofim Lysenko), and the Soviet-provided 4,000,000 victim count of the Auschwitz concentration camp, officially reduced to about 1,500,000 in 1990, and to less than 800,000 in 1993. Nevertheless, in May of 1994, the German Bundesrat (Senate) passed a bill cutting off all debate on the World War II Holocaust.

"Books won't stay banned. Ideas won't go to jail. In the long run of history, the censor and the inquisitor have always lost," wrote Yale University President A. Whitney Griswold in 1952. But forty years later, at this renowned institution, ideas of historical revisionism are

still quashed and at its famous Sterling Library, revisionists' books are still banned. It seems that over the centuries some academicians have insufficiently learned from the history of science and jurisprudence.

In December of 1993, editors of the Brandeis University campus newspaper supported the concept of free speech by printing a preposterous advertisement of a populist Holocaust denier proclaiming that:

> "[t]he U.S. Holocaust Memorial Museum displays no proof anywhere of homicidal 'gassing' chambers and no proof that even *one individual* was 'gassed'..."

The newspaper was likely inspired by the words of Justice Louis Brandeis who in 1927 wrote:

> "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by process of education, the remedy to be applied is more speech, not enforced silence."

Accurate knowledge of history is essential for the future well-being of all. George Santayana wrote that those who disregard the past are bound to repeat it.

V. CONCLUSION:

Public libraries have their own rules and codes but are also subject to outside pressures through their dependence on state and local funding as well as private organizational and individual contributions. *Amicus* found that library contents in at least two forms of unpopular historical revisionism are absent at the Respondent library which was accused of such censorship in the instant case, and absent and/or markedly underrepresented at most public libraries. Because libraries have not developed significant safeguards against intralibrary censorship, and for all of the foregoing reasons and for the reasons set forth in Petitioner's brief, *Amicus* respectfully requests this Court to grant the writ of certiorari submitted by the Petitioner.

Respectfully submitted,

Mark Lane,
Counsel of Record
105 Second Street, N.E.
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June, 1994

VI. CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of June, 1994, I caused to be served by first class mail, postage prepaid, a copy of Motion for Permission to File Amicus Curiae Brief and Amicus Brief of the Polish Historical Society upon:

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All parties required to be served have been served.

_____

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